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TITLE III.

Of Pleadings and Adjournments.

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Pleadings when to take place.

SEC. 27. The pleadings in justices' courts shall take place upon the appearance of the parties, unless they shall have been previously filed, or unless the justice shall for good cause shown, allow a longer time, than the time of appearance.

Pleadings enumerated and defined.

SEC. 28. The pleadings in justices' courts shall be:

- 1. The complaint of the plaintiff, which shall state in a plain and direct manner, the facts constituting the cause of action;
- 2. The answer of the defendant, which may contain a denial of the complaint or any part thereof, and also a statement, in a plain and direct manner, of any facts constituting a defence;
- 3. When the answer sets up a set-off, by way of defence, the reply of the plaintiff.

When to be in writing.

SEC. 29. The pleadings shall be in writing, when the action is for one of the following causes:

- 1. For the foreclosure of any mortgage, or the enforcement of any lien on personal property;
- 2. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements or other possessions;
- 3. To recover the occupancy or possession of a mining claim. In all other cases, the pleadings may be oral or in writing.

Oral pleadings how entered.

SEC. 30. When the pleadings are oral, the substance of them shall be entered by the justice, in his docket; when in writing they shall be filed in his office, and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

How construed in certain cases.

SEC. 31. A statement in an answer or reply, that the party has not sufficient knowledge, or information, in respect to a particular allegation in the previous pleading of the adverse party, to form a belief, shall be deemed equivalent to a denial.

Written instrument, how pleaded.

SEC. 32. When the cause of action or set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set-off. The court may, at the time of pleading re-

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quire that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if it be not so exhibited, may prohibit its being afterwards given in evidence.

To be exhibited to party.

SEC. 33. Every complaint, answer or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true; the verification shall be oral, or in writing, in conformity with the pleading verified.

Verification of pleadings.

SEC. 34. Every material allegation in a complaint, or relating to a set-off in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case.

Pleadings not denied, to be deemed true.

SEC. 35. Either party may object to a pleading by his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

Defective pleading may be objected to.

SEC. 36. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

Variance when disregarded. Denio 419.

SEC. 37. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency, or omissions in the allegations or denials, necessary to support the action or defence, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment shall be granted. The court may, also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

Amending pleadings. Denio 139 4 do. 570; Barb. 552.

SEC. 38. To entitle a defendant to any set-off he may have against the plaintiff, he must allege the same in his answer, and the statute, regulating set-offs in the district court, shall in all respects, be applicable to a set-off in a justice's court, if the amount claimed to be set-off be within the jurisdiction of a justice of the peace, and judgment may, in like manner, be rendered by the justice, in favor of the defendant, for the balance found due from the plaintiff.

Defendant must allege set-off in answer.

SEC. 39. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if the defendant be not under arrest, and sufficient cause be shown on oath, adjourn the case for any time not exceeding sixty days. If the adjournment be on account of absence of testimony, it shall be for such reasonable time, as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Adjournments, when and how allowed.

SEC. 40. An adjournment, on account of the absence of testi-

Ib. For absence of wit-

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 ness can only be obtained on affidavit.
 Terms which may be imposed for granting adjournment.

mony, shall only be allowed upon affidavit, showing the materiality of the testimony expected to be obtained, and that due diligence has been used to procure it. The justice may also require the party applying to state upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

SEC. 41. The party applying for the adjournment, shall, also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before the justice, which shall be done accordingly; and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness were produced.

TITLE IV.

Of Witnesses and Depositions.

- SEC. 42. Justice may subpoena witness if within twenty miles.
- 43. Subpoena how served.
- 44. Attachment when to issue against witnesses.
- 45. Attachment to be directed to sheriff; and how executed.
- 46. Liability of witnesses not appearing.
- 47. One party may examine his adversary.
- 48. Testimony of party may be rebutted.
- 49. Effect of party's refusing to testify.
- 50. Testimony by a party not responsive to the inquiries, may be rebutted by the oath of the party calling him.
- 51. When depositions may be taken.
- 52. Depositions how taken; service of notice.
- 53. When depositions may be read in evidence.

Justices may subpoena witnesses within 20 miles.
 Subpoena, how served.

SEC. 42. A subpoena issued by a justice of the peace shall be valid to compel the attendance of a witness, in a justice's court, if such witness be within twenty miles of the place of trial.

SEC. 43. A subpoena may be served by any white person, above the age of eighteen years, by reading it to the witness, or by delivering to him a copy thereof, if he require it, or by leaving a copy at his usual place of abode.

Attachment, when to issue.

SEC. 44. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person duly subpoenaed to appear before him in an action, shall have failed without a just cause to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness—*Provided*, that no attachment shall issue against a witness, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena.

How executed.
 Fees thereon

SEC. 45. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officers, for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause,

to the satisfaction of the justice, for his omission to attend, in which case, the party requiring such attachment shall pay all such costs.

SEC. 46. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for all damages which such party may have sustained by reason of his non-appearance—*Provided*, that such witness had the fees allowed for mileage and one day's attendance, paid or tendered to him in advance.

SEC. 47. A party to an action may be examined as a witness at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken.

SEC. 48. The examination of a party, thus taken, may be rebutted by adverse testimony.

SEC. 49. If a party refuse to attend and testify at the trial, or give his deposition before trial when required, his complaint, answer, or reply may be stricken out, and judgment taken against him.

SEC. 50. A party, examined by an adverse party, may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received.

SEC. 51. Either party, in an action depending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial.

SEC. 52. The notice shall be served, and the deposition taken, certified and returned, according to the law regulating the taking of depositions, to be read in the district court.

SEC. 53. The justice shall allow every deposition taken, certified, and returned, according to law, to be read on the trial of the cause, in which it is taken, in all cases, where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness whose deposition is so offered:

1. Is dead, or resides more than twenty miles from the place of trial; or

2. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity; or

3. That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party, offering the deposition.

TITLE V.

Title to Lands.

SEC. 54. Proceedings of justice when title of land comes in question.

SEC. 54. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands

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 Liability for damages; 11 Wen. 637.

Party may examine adversary. 3 Sanf. 718; 3 Coms. 489.

Testimony of party may be rebutted.

Effect of refusal.

Testimony by a party not responsive to the inquiries, may be rebutted by the oath of the party calling him. 2 Sanf. 399.

When depositions may be taken.

How taken.

When may be read.

Proceedings when title of land

TITLE 6. is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all further proceedings in the cause, and shall certify, and return to the district court of the county a transcript of all the entries made in his docket, relating to the case, together with all the process, and other papers relating to the action, in the same manner, and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the costs shall abide the event of the suit.

TITLE VI.

Trial by Jury.

- SEC. 55. When either party may demand trial by jury.
 56. Number of jurors.
 57. Venire to be issued, to whom directed, its contents.
 58. Venire, how to be executed.
 59. Challenge to jurors, how taken.
 60. Challenge for cause; on what ground; challenge how tried.
 61. Justice to administer oath, &c., to jury; its form.
 62. Jury to sit together, proof, &c., how delivered.
 63. Verdict when to be returned; how entered, &c.
 64. Jury to be discharged if they cannot agree; new venire when.
 65. Penalty if juror do not appear.

When jury may be demanded. - SEC. 55. Before the justice shall commence an investigation of the merits of the cause, by an examination of the witnesses, or the hearing of any other testimony, either of the parties may demand of the justice, that the cause be tried by a jury.

Number of jurors. SEC. 56. The jury shall consist of six persons, unless the parties agree upon any number of jurors less than six to try the cause, in which case the jury shall consist of such number not exceeding six, as the parties may agree upon.

Venire, its contents. SEC. 57. The justice shall issue a venire, directed to the sheriff, or any constable of the county where the cause is to be tried, commanding him to summon six (or such number as the parties may have agreed upon) good and lawful men of the county, qualified to serve as jurors in the district court of the same county, who shall be nowise of kin to either party, nor interested in the action, to appear before said justice, at a time and place to be named therein, to make a jury for the trial of the cause, between the parties therein named.

How to be executed. SEC. 58. The sheriff or constable shall execute such venire fairly and impartially, and shall not summon any person, whom he has reason to believe is biassed, or prejudiced for or against either of the parties; he shall summon the jurors personally, and shall make a list of the persons, which he shall certify, and annex to the venire, and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the sheriff or constable shall immediately summon others to serve in their place.

Challenge to jurors. SEC. 59. Either party may challenge the jurors, but when there are several parties on either side they shall join in a challenge, before it can be made. The challenges shall be to individual jurors,

and shall be peremptory, or for cause. Each party shall be entitled to two peremptory challenges. **TITLE 7.**

SEC. 60. Challenges for cause may be taken on any ground, that would be a good cause of challenge on the trial of an action in the district court. Challenges for cause shall be tried by the justice. *Id.* For cause

SEC. 61. When the jury is selected, the justice shall administer to them the following oath or affirmation: *Jurors' oath.*

"You, and each of you, do solemnly swear (or affirm) that you will well and truly try the matter of difference between A. B., plaintiff, and C. D., defendant, and a true verdict give, according to law and the evidence given to you in court, so help you God."

SEC. 62. After the jury are sworn, they shall sit together, and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence. *Hearing of proof, &c.*

SEC. 63. When the jury have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket. *Return of verdict, &c.*

SEC. 64. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce. *Jury when to be discharged.*

SEC. 65. Every person, who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars. *New venire.* *Penalty if juror do not appear.*

TITLE VII.

Of Judgment.

- SEC. 66. When action may be dismissed without prejudice.
 67. When defendant may be non-suited.
 68. When justice may proceed without jury.
 69. Judgment when to be rendered.
 70. Defendant may serve offer to compromise, and proceedings thereon.
 71. Proceedings when prevailing party is entitled to costs.

SEC. 66. Judgment that the action be dismissed without prejudice to a new action, may be entered, with costs, in the following cases: *When action may be dismissed without prejudice.*

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;
2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter;
3. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county, but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

SEC. 67. When the defendant fails to appear and answer at the time specified, in the summons, or within one hour thereafter, judgment shall be given as follows: *Defendant non-suited.*

1. When the defendant has been served with a copy of the complaint, judgment shall be given without further evidence, for the sum specified in the summons;

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2. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only, as shall appear by the evidence to be just; but in no case exceeding the amount specified in the summons.

When justice may proceed without jury.

SEC. 68. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly.

Judgment when to be rendered.
19 Wen. 372;
6 Hill, 89; 3
Denio 71; 3
Barb. 594.

SEC. 69. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be immediately entered after the close of the trial, if the defendant has been arrested and is still in custody; in other cases, it shall be entered within three days after the close of the trial.

Defendant may serve offer to compromise proceedings thereon.

SEC. 70. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action, a sum greater than the offer, such plaintiff shall not recover any costs, that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to effect the recovery otherwise than as to costs, as above provided.

Proceedings when prevailing party entitled to costs.

SEC. 71. When the prevailing party is entitled to costs by this chapter, the justice shall add their amount to the judgment, or in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, he shall enter up judgment in favor of the defendant, for the amount of such costs.

TITLE VIII.

Stay of Execution and Filing Transcripts.

SEC. 72. When and how long execution on judgment by justice may be stayed.

73. Undertaking in such case necessary.

74. Requisites and form of undertaking.

75. On expiration of stay, judgment to issue; and against principal and bail.

76. Bail, entitled to judgment against principal on motion.

77. Judgment, after execution, stayed as on appeal.

78. Filing transcript of judgment.

79. Transcript when filed a lien on real estate.

Stay of execution.

SEC. 72. The execution upon a judgment, by a justice of the peace, may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party; and for the following periods of time, to be calculated from the date of the judgments:

1. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month;

2. If it be for more than twenty-five dollars, two months.

Undertaking in such case.

SEC. 73. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after the rendering of the judgment, enter into an undertaking before the justice, to the adverse party, in a sum, sufficient to secure the payment of

the judgment and costs, conditioned to be void upon such payment at the expiration of the stay.

SEC. 74. Such undertaking shall be signed by the person entering into the same, and may be in the following form:

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Form of undertaking, &c.

Whereas A. B. has obtained a judgment before J. P., one of the justices of the peace, in and for _____ county, on the _____ day of _____, 18____, against C. D., for _____ dollars: Now therefore I, E. F., acknowledge myself bound to A. B., in the sum of _____ dollars; this undertaking to be void, if such judgment shall be paid at the expiration of _____ month, after the time it was rendered.

Dated the _____ day of _____, 18____. E. F.

SEC. 75. If at the expiration of such stay the judgment be not paid, the execution shall issue against both the principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property, belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money, collected by him on the execution, was collected from the bail, and the time when the same was received.

On expiration of stay, judgment to issue.

SEC. 76. After the return of such execution, the bail shall be entitled on application to the justice, to have the judgment, or so much thereof as may have been collected from him, in satisfaction of the execution, transferred to his use, and he may collect the same from the defendant, by execution, together with interest at the rate of twelve per cent. per annum.

Bail, when and how indemnified.

SEC. 77. If a judgment be stayed in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with the like effect, as he is hereinafter directed to revoke an execution, after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody.

Judgment after execution stayed as on appeal.

SEC. 78. Every justice on demand of any person, in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified transcript of such judgment, and the clerk of the district court of the county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the judgments of the district court, and shall note therein, the time of filing such transcript.

Filing transcript of judgment.

SEC. 79. Every such judgment, from the time of filing the transcript thereof, shall have the same lien on the real estate of the defendant in the county, as a judgment of the district court of the same county; shall be equally under control of the district court, and shall be carried into execution in the same manner, and with like effect, as the judgments of such district court; but no execution shall be issued thereon out of the district court, until an execution shall have been issued by a justice, and returned that the defendant has no goods or chattels whereon to levy the same.

Transcript when a lien on real estate.

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TITLE IX.

Setting off Judgment.

- SEC. 80. When judgments of justice's court, may be set off against similar judgments.
 81. Transcript of judgment when to be produced;
 82. Proceeding by justice after allowance or disallowance.

When judgments may be set off.

SEC. 80. If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice, before whom the judgment against which the set-off is proposed, may be.

Ib. Transcript of, when to be produced.

SEC. 81. If the judgment, proposed as a set-off was rendered before another justice, the party proposing such set-off, shall produce, before the justice, a transcript of such judgment, upon which there is a certificate of the justice, before whom such may be, that it is unsatisfied in whole or in part, and that there is no appeal, and that such transcript was obtained, for the purpose of being set off against the judgment to which it is offered as a set-off. The justice granting such transcript, shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed unless such transcript be returned, with the proper justice's certificate thereon, that it has not been allowed in set-off.

Proceedings after allowance, or disallowance of such set-off.

SEC. 82. If any justice shall set off one judgment against another, he shall make an entry thereof, in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment, rendered by another justice, to be set off, he shall file such transcript among the papers relating to the judgment, in which it is allowed in set-off; if he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

TITLE X.

Of Executions and Proceedings thereon.

- SEC. 83. Execution, when and how issued.
 84. Execution, when to be issued by succeeding justice.
 85. Execution, how issued on transcript of justice in other counties.
 86. Execution, to whom directed, when returnable.
 87. Duty of justice before issuing execution.
 88. Execution, how renewed.
 89. Notice of sale, how to be given, and what to contain.
 90. Sale of goods and return of execution.
 91. Officer making sale, not to purchase any property.
 92. When warrant may issue, after return unsatisfied.
 93. Garnishees may be summoned when no property found.
 94. When execution may issue against plaintiff, after return unsatisfied against defendant.
 95. Jury when summoned to try the right of property.
 96. Claimant may withdraw claim before jury retire; consequence of withdrawal.
 97. Claimant may pursue any other legal remedy not specified in this chapter.

Execution when and how issued.

SEC. 83. Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, in the manner hereinafter prescribed, but after the lapse of

five years from the date of the judgment, no execution shall issue, except by leave of the justice, before whom such judgment may be, upon reasonable notice to the defendant.

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SEC. 84. When any judgment shall have been rendered by any justice of the peace, and the same shall not be satisfied, during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered, shall issue execution upon such unsatisfied judgment, in the same manner, and with like effect, as if he himself had rendered the judgment.

Ib. By succeeding justice.

SEC. 85. If the defendant have not goods and chattels in the county in which judgment was rendered, sufficient to satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs, as in other cases.

Execution on transcript in other counties.

SEC. 86. The execution shall be directed (except when it is otherwise specially provided) to the sheriff or any constable of the county, where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and shall be against the goods and chattels of the person against whom the same is issued.

Execution to whom directed; when returnable.

SEC. 87. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall indorse thereon the time of the reception of the same.

Duty of justice before issuing.

SEC. 88. If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice who issued the same, or the justice to whom his docket is transferred, by an indorsement thereon to that effect, signed by him and dated when the same shall be made. If any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force, in all respects, for thirty days and no longer, and an entry of such renewal shall be made in the docket of the justice.

How renewed. 12 Wen. 146; 2 Hill, 331; 7 Barb. 72.

SEC. 89. The officer, after taking goods and chattels into his custody, by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county, of the time and place, when and where, they will be exposed to sale; such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Notice of sale. 2 Cow. 421.

SEC. 90. At the time and place so appointed, if the goods and chattels be present, for the inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution, and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

Sale, return of execution, &c. 7 Wen. 236.

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Certain officers not to purchase
When warrant may issue after return unsatisfied.

SEC. 91. No officer shall directly or indirectly purchase any goods or chattels, at any sale, made by him upon execution; and every such purchase shall be absolutely void.

SEC. 92. If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued, after the return of an execution, against his property, unsatisfied in whole or in part. An execution against the person may likewise be issued after such return, where the defendant has been arrested upon a warrant, and not discharged according to law.

When garnishee may be summoned.

SEC. 93. If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall, on demand of the plaintiff, summon, in writing, as garnishees, such persons as may be named to him by the plaintiff, or his agent, to appear before the justice, on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and the like proceedings shall be had thereon before the justice, to final judgment and execution, as in proceedings by attachment.

Execution against plaintiff for costs, &c., after return unsatisfied.

SEC. 94. Any justice of the peace may issue an execution against the plaintiff to collect fees and costs, for which such plaintiff may be liable, after an execution has been first issued against the defendant, and returned "no property found."

Jury when summoned to try right of property.

SEC. 95. If any property levied on be claimed by any person other than the defendant in the execution, the sheriff or constable shall summon from his county six persons, qualified as jurors between the parties to try the validity of the claim; such officer shall also give reasonable notice of the claim, and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury, and the witnesses of the parties, shall be sworn by the officer, and if their verdict be in favor of the claimant, the officer may relinquish the levy, unless the plaintiff give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff, or constable, and the witnesses, shall be the same as for similar services in a justice's court, and shall be paid by the claimant if the verdict be against him; otherwise, by the plaintiff. On the trial, the defendant and the claimant may be examined as witnesses by the plaintiff.

Fees.

SEC. 96. If at any time before the jury retire, the claimant withdraws his claim, the trial shall proceed no further, and the claimant shall pay the costs of such unfinished trial.

Withdrawal of claim.

Claimant may pursue any other legal remedy.

SEC. 97. Nothing contained in the last two sections shall be so construed as to prevent the claimant of property, levied on by execution, from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed.

TITLE XI.

Of Replevin.

SEC. 98. When plaintiff may claim delivery of property.

99. Affidavit to be made by plaintiff; its contents.

100. Justice to indorse affidavit of plaintiff to sheriff, &c.

101. Upon receipt of affidavit and undertaking, sheriff to replevin, &c.

102. Exception to sureties, and proceedings thereon, or on failure to except.

TITLE 11.

SEC. 103. Defendant when entitled to re-delivery.

104. Justification of defendant's sureties.

105. Property how taken if concealed in building or enclosure.

106. Property replevined, how kept.

107. Claim of property by third person, and proceedings thereon.

108. Return of order and affidavit.

SEC. 98. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter. When claim for delivery may be made

SEC. 99. When a delivery is claimed, an affidavit shall be made by the plaintiff or by some person in his behalf, showing: Affidavit of plaintiff.

1. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof, according to his best knowledge, information and belief;

4. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution, or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure; and

5. The actual value of the property.

SEC. 100. The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff, or any constable of the county to take the same from the defendant and deliver it to the plaintiff, upon receiving a proper undertaking. Justice to indorse affidavit to sheriff.

SEC. 101. Upon the receipt of the affidavit and order, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect, that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum, as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant, or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order and undertaking, by delivering the same to him personally, if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual place of abode of either, within the county, with some person of suitable age and discretion, or if neither have any known place of abode in the county, by putting them into the post office, directed to the defendant, at the post office nearest to him. Officer when to replevin.

SEC. 102. The defendant may, within two days after the service of a copy of the affidavit, order and undertaking, give notice to the officer, that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to Exception to sureties and proceedings thereon, or on failure to except.

TITLE II. them is either waived as above provided, or until they justify, or new sureties be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next session.

Defendant when entitled to re-delivery. SEC. 103. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect, that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him, of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter.

Justification of defendant's sureties. SEC. 104. The defendant's sureties, upon one day's notice to the plaintiff, or his attorney, shall justify before the justice, and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties, until they justify, or until the justification is completed or expressly waived, and may retain the property until that time, but if they, or others in their place fail to justify at the time appointed, he shall deliver the property to the plaintiff.

Property, how taken if concealed in building or enclosure. SEC. 105. If the property, or any part thereof be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession.

Property, how kept. SEC. 106. When the officer shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

Claim of property by third persons. SEC. 107. If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer, before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim, by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent, shall be valid against the officer unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

Return of order and affidavit. SEC. 108. The officer shall return the order and affidavit, with his proceedings thereon, to the justice within five days, after taking the property mentioned therein.

TITLE XII.*Of Attachments.*

- TITLE XII.**
- SEC. 109.** When plaintiff may have personal property of defendant attached.
110. When writ of attachment may issue.
111. Security may be required by officer before executing writ.
112. Writ, to whom directed, and what to require.
113. Interests in corporation and other property liable to attachment.
114. Officer how to execute writ.
115. Debtors, &c., of defendant when liable to plaintiff.
116. When debts, &c., may be collected; perishable property to be sold.
117. When officer may leave property attached with claimant.
118. Action on undertaking against principal, a defence that the property did not belong to defendant.
119. Sheriff may summon a jury when the property attached is claimed by third persons.
120. Certificate of defendant's interest in corporation, when to be furnished to officer.
121. Person refusing to give certificate may be examined on oath.
122. Plaintiff may exhibit interrogatories to garnishee.
123. Garnishee to answer interrogatories under oath.
124. Judgment against garnishee not final, till final judgment against defendant.
125. Plaintiff may except to garnishee's answer; amendment to answer.
126. Plaintiff may deny garnishee's answer; trial of issue; when answer deemed true.
127. Judgment against garnishee when answer is not excepted to or denied.
128. How garnishee, before final judgment, may discharge himself.
129. Examination of defendant or claimant.
130. Costs in actions between plaintiff and garnishee.
131. Judgment against defendant, how satisfied.
132. Proceedings, when execution is unsatisfied after sale; or balance due defendant.
133. Proceedings in case defendant recover judgment.
134. When defendant may move to discharge attachment.
135. When plaintiff may oppose such motion by affidavit.
136. Plaintiff, how and when to give notice of attachment by publication.
137. Form of notice.
138. Last publication, when to be made.
139. If defendant do not appear, execution not to issue, unless bond is given.
140. Certain earnings of defendant exempt from execution.
141. Public officers not liable as garnishees.
142. Writ of attachment, when returned; sheriff, &c., to indorse his proceedings thereon.

SEC. 109. In an action for the recovery of money, the plaintiff, at the time of issuing the summons, or at any time before judgment, may have the personal property of the defendant attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 110. A writ of attachment shall be issued by the justice before whom the action is brought, whenever the plaintiff, his agent, or attorney, shall make affidavit that a cause of action exists against such defendant, specifying the amount of such claim, over and above all legal set-offs, and the nature thereof, and that as the affiant verily believes the defendant is either:

1. A foreign corporation;
2. That he is not a resident of this territory, or has departed therefrom, with the intent to delay or defraud his creditors, or to avoid the service of a summons;
3. That he has assigned, secreted, or disposed of, or is about to

When attachment may issue.

1b.
18 Wen. 611;
4 Hill 601.

TITLE 12. assign, secrete, or dispose of his property, or any part thereof, with the intent to delay or defraud his creditors; or,
 4. That the debt was fraudulently contracted.

Officer may require security.

SEC. 111. A copy of the affidavit, required by the last section, shall be attached to the writ, upon issuing the same. Before executing such writ, the sheriff or constable, to whom it is directed, shall require a written undertaking on the part of the plaintiff, with one or more sureties, in a sum not less than fifty dollars, nor exceeding the amount claimed by the plaintiff, to the effect, that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ to whom directed and what to require.

SEC. 112. The writ shall be directed to the sheriff, or any constable of the county in which such writ shall have been issued, and shall require him to attach, and safely keep all the personal property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, as stated in the affidavit, together with costs and expenses.

Interest in corporations and other property liable to attachment.

SEC. 113. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, all debts due such defendant, and all other personal property of such defendant, not exempt from execution, may be attached, and if judgment be recovered against him, be sold or collected to satisfy the judgment or execution.

Execution of writ.

SEC. 114. The sheriff or constable, to whom the writ is directed and delivered, shall execute the same without delay, as follows :

1. Personal property, capable of manual delivery to such officer, shall be attached by taking it into his custody ;

2. Stock or shares, or interest in stock or shares of any corporation or company, shall be attached, by leaving with the president, or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ and affidavit, and a notice that the stock or interest of the defendant is attached, in pursuance of such writ ;

3. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control such credits, or other personal property, a copy of the writ and affidavits, and a notice that the debts owing by him to the defendant, or the credits, and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Liability of debtors, &c., of defendant.

SEC. 115. All persons, having in their possession or under their control any credits, or other personal property, belonging to the defendant, at the time of service upon them of a copy of the writ, affidavit and notice, as provided in the first section, shall, unless such property be delivered up or transferred, or such debts be paid to the sheriff or constable, be liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Collection of debts; sale

SEC. 116. Debts and credits attached, may be collected by the

sheriff or constable, if the same can be done without suit, and the receipt of such officer shall be a sufficient discharge for the amount paid. Such officer shall sell any perishable property, which may be attached, in the same manner in which property is sold on execution. Money collected, and the proceeds of such sale, shall be retained by the officer to answer any judgment that may be recovered in the action.

TITLE 12. of perishable property.

SEC. 117. The sheriff or constable may deliver any of the property attached to the defendant, or to any other person claiming it, and in whose possession it was attached, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, in double the value of the property, engaging to re-deliver it, or pay the value thereof, to the sheriff or constable to whom execution upon a judgment, obtained by the plaintiff in that action, may be issued.

When officer may leave property attached with claimant.

SEC. 118. If an action be brought upon such undertaking, against the principal or his sureties, it shall be a defence, that the property for which the undertaking was given, did not, at the execution of the writ of attachment, belong to the defendant, against whom it was issued.

Action on undertaking when a defence.

SEC. 119. If any personal property attached be claimed by a third person, as his property, the sheriff or constable may summon a jury to try the validity of such claim, and the same proceedings shall be had thereon, with the like effect, as in case of a seizure upon execution.

Sheriff may summon jury, when property is claimed by third persons.

SEC. 120. When the sheriff or constable, with a writ of attachment against the defendant, shall apply to any person, mentioned in the second or third sub-divisions of section one hundred and fourteen, for the purpose of attaching the personal property mentioned therein, such person shall furnish him with a certificate, designating the number of shares of the defendant in the stock of the corporation or company, with any dividend or incumbrance thereon, or the amount and description of the property or credits held by such corporation, company, or person, for the defendant, or the debt owing to the defendant. Such certificate shall be verified by the oath of the person giving the same, which oath may be administered by the officer having the writ of attachment, or by any other officer authorized to administer oaths.

Certificate of defendant's interest in corporation.

SEC. 121. If such person refuse to give the certificate required in the last section, or if his certificate be unsatisfactory to the plaintiff, he may be required by an order of the justice, who issued the writ of attachment, to appear before such justice at the time therein stated, not less than three days thereafter, and be examined on oath concerning the same.

Person refusing certificate, &c.

SEC. 122. At any time after the making of such order, the plaintiff may exhibit written allegations and interrogatories, touching the property, stock, or credits of the defendant in the possession of, or held by such person or corporation as garnishee, or debts owing by him or it, and such garnishee shall be required to make full, direct, and true answers to the same on oath.

Interrogatories to garnishee.

SEC. 123. On the day when the garnishee shall be required to attend before the justice, he shall exhibit on oath, his answer to the allegations and interrogatories of the plaintiff, unless for cause

Garnishee to answer.

TITLE 12. shown a further time shall be allowed; in default of such answer, the plaintiff may take judgment by default against him, or the justice may punish him as for a contempt.

Judgment against garnishee. SEC. 124. Such judgment by default may be proceeded on to final judgment, in like manner as in actions against defendants, but no final judgment shall be rendered against the garnishee, until there shall be final judgment against the defendant, and in no case for a greater amount than that sworn to by the plaintiff, with interest and costs.

Excepting to garnishee's answer SEC. 125. The plaintiff may except to the answer of the garnishee for insufficiency, and if the same shall be adjudged insufficient, the justice may allow the garnishee to amend his answer, in such time and on such terms as may be just, or the plaintiff may take judgment by default, or move the justice to attach the body of the garnishee, to compel a sufficient answer.

Denial of answer; issue. SEC. 126. The plaintiff may deny the answer of the garnishee, in whole or in part, and the issues shall be tried as ordinary issues between plaintiff and defendant. If the answer be not excepted to or denied in such time, as the justice may deem proper, it shall be taken to be true and sufficient.

Judgment when answer is not excepted to or denied. SEC. 127. If by the answer not excepted to or denied, or if upon trial it shall appear that the garnishee is possessed of property and effects of the defendant, or is indebted to the defendant, the value of such property or effects, or of the debt, being ascertained, judgment may be rendered against the garnishee, for the proper amount in money, and in such case the justice may make him a reasonable allowance for his trouble in answering, to be paid out of the fund confessed in his hands.

Garnishee may discharge himself. SEC. 128. Whenever any property, effects, money, or debts, belonging or owing to the defendant, shall be confessed or found by the justice, or jury, to be in the possession of the garnishee, he may at any time before final judgment, discharge himself by delivering the same to the sheriff or constable.

Defendant, &c., may be examined. SEC. 129. The defendant or claimant may be required to attend before the justice, or jury, for the purpose of giving any necessary information respecting the property attached, and may thereupon be examined on oath concerning the same.

Costs of plaintiff and garnishee. SEC. 130. In all cases of controversy between the plaintiff and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

Judgment how satisfied. SEC. 131. If judgment be recovered by the plaintiff against the defendant in such action, the sheriff or constable shall satisfy the same out of the property attached, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property, sold by him, or of any debts or credits, collected by him, or so much as may be necessary to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution, so much of the property as may be necessary to satisfy the balance, if enough for that purpose remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or company, the sheriff, or constable, shall execute to the purchaser a cer-

TITLE 12. tificate of the sale, and the purchaser shall thereupon have all the rights and privileges in respect thereto, which were had by the defendant. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

If execution is unsatisfied. SEC. 132. If, after selling all the property attached by him remaining in his hands, and applying the proceeds to the payment of the judgment and costs, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment and all the costs of the proceedings shall have been paid, the sheriff, or constable, upon reasonable demand, shall deliver over to the defendant, the residue of the attached property, or the proceeds thereof.

Judgment for defendant, &c. SEC. 133. If the defendant recover judgment against the plaintiff in any undertaking received in the action, all the proceeds of sales, and money collected by the sheriff or constable, and all the property attached, remaining in the hands of the sheriff or constable, shall be delivered to the defendant or his agent, and the order of attachment shall be discharged.

Motion to discharge attachment. SEC. 134. The defendant may also at any time before the time for answering expires, apply on motion to the justice to discharge the attachment, on the ground that the writ was improperly issued.

Counter-motion by plaintiff, &c. SEC. 135. If the motion be made upon affidavit on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other evidence, in addition to those, on which the writ of attachment was issued. If upon such application, it shall satisfactorily appear that such writ was improperly issued, it shall be discharged.

Service of notice by publication. SEC. 136. Whenever the defendant shall not be a resident of the territory, or shall have departed therefrom with the intent to delay or defraud his creditors, or to avoid the service of process, and he cannot be summoned, and the property of such defendant shall have been attached, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant by publication, for four weeks successively in a newspaper printed in the county, or if there be none such, then in some newspaper to be designated by the justice, that a writ of attachment has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place, to be mentioned in said notice, not less than forty-five, nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debts.

SEC. 137. The notice may be in the following form:

Territory of Oregon, }
County of } ss.

In Justice's Court.

To

You are hereby notified that a writ of attachment has been issued against you, and your property attached to satisfy the demand of _____, amounting to _____; now unless you shall appear before J. P., a justice of the peace in and for said county, at his office, on the _____ day of _____, 18 _____, judg-

Form of notice.

TITLE 13. ment will be rendered against you, and your property sold to pay the debt.

Dated this day of , A. D., 18 .

Plaintiff.

Last publication. SEC. 138. The last publication shall be at least two weeks before the expiration of the time, at which the defendant is required to appear.

Proceedings if defendant do not appear. SEC. 139. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, the plaintiff may proceed thereon to final judgment, as in actions commenced by summons; but no execution shall be issued on such judgment against the defendant, nor debts attached be paid to the plaintiff, until such plaintiff, or some person in his behalf, shall enter into a written undertaking, with one or more sufficient sureties, to be approved by the justice, in double the amount of the judgment, to the effect that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt and damages, adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof, as may be found not justly due to him in a review of the case.

When certain earnings of defendant exempt. SEC. 140. The earnings of the defendant for personal services, at any time within sixty days next preceding the judgment against the garnishee, shall not be included in such judgment, nor be liable to attachment, when it shall be made to appear by the affidavit of the defendant or otherwise, that such earnings are necessary for the use of a family, supported wholly or partly by his labor.

Officer not liable as garnishee. SEC. 141. No territorial or county treasurer, sheriff, constable or other public officer shall be liable to answer as garnishee, for moneys in his possession, or under his control, as such public officer, belonging to or claimed by any defendant.

Return of writ. SEC. 142. When the writ of attachment shall be fully executed or discharged, the sheriff or constable shall return the same, with his proceedings thereon, to the justice before whom the action was brought.

TITLE XIII.

Forcible Entry and Detainer.

SEC. 143. No person to make forcible entry into lands, &c.

144. Possession, when and how to be given.

145. Complaint of person entitled to possession, what to contain.

146. Summons of justice, to be directed to sheriff, and what to contain.

147. Summons, how to be served.

148. Venire to sheriff; return of venire.

149. When justice may direct constable to summon other jurors.

150. Plaintiff, when non-sued.

151. Proceedings, on adjournment, by justice, when defendant fails to appear.

152. Defendant's answer, what to contain; answer to be filed.

153. Number of jurors, mode of trial, &c.

154. Verdict for plaintiff and subsequent proceedings.

155. Verdict to be in writing; its form.

156. Verdict of not guilty, proceedings for costs, &c., against plaintiff.

157. When justice may grant a new trial.

158. Merits of title, not to be inquired into.

159. Possession for three years, when a plea in bar.

160. When possession of premises may be recovered.

SEC. 161. Justice may hear and determine without jury, unless when jury demanded.

162. Abatement of action on payment of rent.

163. Adjournments granted by justice as in other cases.

164. Judgment before justice, no bar to another action.

SEC. 143. No person shall make entry into lands, tenements, or other possessions, but in cases where entry is given by law, and in such cases he shall not enter with force, but only in a peaceable manner.

SEC. 144. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person entitled to the premises may be restored to the possession thereof in the manner hereinafter provided.

SEC. 145. The person entitled to the possession of the premises may make complaint in writing, and on oath to a justice of the peace of the county in which the premises are situated, setting forth that the person complained of is in possession of the lands or tenements in question, describing them, and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be, and the time when.

SEC. 146. Upon receiving such a complaint, the justice shall issue a summons directed to the sheriff, or any constable of the county, commanding him to summon the person or persons, against whom such complaint shall have been made, to appear before the justice on a day in such summons named.

SEC. 147. The summons shall be served by the officer, as in other cases, and at the same time a copy of the complaint, shall, in like manner, be served on the defendant; the officer shall in his return state the time and manner of such service.

SEC. 148. The justice shall, at the time of issuing the summons, issue a venire to the sheriff or constable, commanding him to summon six good and lawful men, qualified to serve as jurors, to appear at the time and place appointed, for the trial of the complaint, to be a jury in the case. Such venire shall be returned on or before the day appointed for the trial, and the officer shall indorse thereon the list of jurors summoned.

SEC. 149. If a sufficient number of jurors do not attend, or attending are set aside, by challenging peremptorily, or for cause, the justice may order the sheriff or constable to complete the number by summoning other jurors.

SEC. 150. If the plaintiff fail to attend at the time appointed for hearing the complaint, in person, by agent or attorney, and prosecute his action, he shall be non-sued, and the defendant shall recover his costs.

SEC. 151. If the defendant fail to appear at the time appointed for hearing the complaint, the justice may proceed *ex parte*, or adjourn the cause at his discretion, but he shall not adjourn for a longer time than ten days, nor to any other place, than that named in the summons for the hearing of the cause.

SEC. 152. If the defendant appear, he shall, before the trial, file his answer in writing, and under oath, in which he shall set forth all matters in excuse, justification, or avoidance of the allegations in the complaint.

TITLE 13. SEC. 153. The jury shall consist of six persons, unless the parties agree on a less number, and when duly empanelled and sworn, the justice shall cause the complaint to be read to them, and then call on the plaintiff, to support the same by proof, but the plaintiff shall not be required to make further proof of the forcible entry and detainer, than that he was lawfully possessed of the premises, and that the defendant unlawfully entered, and detains the same.

Verdict for plaintiff. SEC. 154. If the jury on the trial find the defendant guilty, the justice shall record the verdict, and give judgment thereon, with costs, and also issue a writ of restitution, directed to the sheriff, or constable, to cause the plaintiff to be repossessed of the premises, to which shall be added a clause commanding the officer to levy the costs, off the goods and chattels of the defendant.

Verdict to be in writing. SEC. 155. The verdict of the jury shall be in writing, and shall be in the form, or to the effect following:

Its form. "We the jury find the defendant guilty (or if in favor of the defendant, 'not guilty') of said forcible entry and detainer in manner and form as the plaintiff in his complaint hath alleged," or the jury may find the defendant guilty as to part and not guilty as to the balance of the charge, as laid in the plaintiff's complaint; if so, they shall state it specially in their verdict.

Verdict of "not guilty." SEC. 156. When the jury find a verdict of "not guilty" generally for the defendant, the verdict shall be so recorded, and the justice shall enter judgment against the plaintiff for costs, and issue execution therefor against his goods and chattels.

New trial. SEC. 157. In all cases of forcible entry and detainer, the justice shall have power to grant a new trial, if the same be applied for on the day the verdict is rendered, and good cause be shown on affidavit therefor, which shall be within ten days after granting the same; but not more than one new trial shall be granted to either party.

Merits of title not to be mooted. SEC. 158. The estate or merits of the title shall in no wise be inquired into, on any complaint for a forcible entry and detainer.

Possession for three years, a plea in bar. SEC. 159. Three years quiet possession of the premises, immediately preceding the filing of the complaint, by the party complained of, or those under whom he holds, may be pleaded by any defendant, in bar of the plaintiff's demand of possession, unless his estate therein be ended.

When possession may be recovered SEC. 160. The person, entitled to any premises, may recover possession thereof in the manner hereinbefore provided in the following cases:

1. When any person shall hold over any lands, or tenements, after the time for which they are demised, or let to him, or to the person under whom he holds, or contrary to the conditions, or covenants of any lease or agreement under which he holds;

2. When any rent shall have become due, or any such lease or agreement, and the tenant or person in possession shall have neglected or refused for ten days after demand of the possession, made in writing, to deliver up possession of the premises, or pay the rent so due;

TITLE 14. 3. When any person shall continue in possession of any premises, sold by virtue of any mortgage or execution, after the expiration of the time, limited by law, for the redemption of such premises;

4. When any tenant at will or by sufferance shall hold over after the determination of his estate by a notice to quit, as provided by law.

SEC. 161. When the plaintiff shall file a complaint for an unlawful detainer, for any one of the causes mentioned in the last section, it shall not be necessary for the justice to issue a venire for a jury, at the time of issuing the summons, but the justice shall, at the time of trial, proceed to hear and determine the complaint, unless either party shall call for a trial by jury, in which case the justice shall issue a venire in the same manner, and the same proceedings shall thereupon be had as in cases of forcible entry and detainer.

SEC. 162. When the action shall be brought to recover the possession of premises demised, or let, for the reason that the tenant, or person in possession, has refused or neglected to pay the rent due; it shall be lawful for the defendant, at any time before judgment, to pay to the justice for the plaintiff, the rent then in arrear, with interest, and the costs of the action, and thereupon no writ of restitution shall be awarded.

SEC. 163. The justice shall have the same power to adjourn in actions for forcible entry and detainer as in other cases.

SEC. 164. Neither the judgment, nor anything contained in this chapter, shall bar or prevent the party injured, from bringing an action to recover the possession of the premises, or to recover damages, for the trespass or injury committed, against the aggressor or party offending.

TITLE XIV.

Action to recover Possession of a Mining Claim.

SEC. 165. Complaint, how made and what to contain.

166. Proceedings upon filing complaint.

167. Custom, &c., of the diggings, evidence when not in conflict with law.

SEC. 165. Any person, claiming the right to the occupancy and possession of a mining claim, withheld by another, may make complaint in writing, and on oath, to a justice of the peace of the county, in which the mining claim is situated, setting forth the facts constituting his right to such possession and occupancy, and such a description of the mining claim as can conveniently be given, and that the defendant wrongfully withholds the possession from him.

SEC. 166. Upon filing such complaint, the same proceedings shall be had before the justice, as in actions for a forcible entry and detainer, and if judgment be rendered for the plaintiff, a writ of restitution may in like manner be issued to place the plaintiff in possession of such mining claim.

SEC. 167. In an action to recover possession of a mining claim, proof shall be admitted of the customs, usages or regulations, established and in force at the bar, or diggings embracing such claim;

Justice may proceed without a jury.

Action to abate on payment of rent, &c.

Adjournment.

Judgment not final.

Complaint.

Proceedings on filing complaint.

Customs, usages, &c., evidence.

TITLE 15. and such customs, usages, or regulations, when not in conflict with the laws of the United States, or of this territory, shall govern the decision of the action.

TITLE XV.

Of Proceedings for Contempts before Justices of the Peace.

- SEC. 168. When justice may punish for contempt.
169. Contempt how punished.
170. No person to be punished for contempt without a hearing.
171. Offender, if present may be arraigned.
172. Warrant for contempt; its form.
173. Conviction to be entered in docket.
174. Warrant of commitment when to issue.

When justices may punish for contempt. SEC. 168. In the following cases, and no others, a justice of the peace may punish for contempt:

- 1. Persons guilty of disorderly, contemptuous, and insolent behavior towards such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceeding, which tends to interrupt such proceedings, or impair the respect due to his authority;
2. Persons guilty of any breach of the peace, noise, or disturbance, tending to interrupt the official proceedings of such justice;
3. Persons guilty of resistance, or disobedience to any lawful order, or process, made or issued by him.

Contempt, how punished. SEC. 169. Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail, not exceeding two days, at the discretion of the justice, unless otherwise provided by the statute.

No person to be punished without a hearing. SEC. 170. No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defence; and for that purpose, the justice may issue his warrant to bring the offender before him.

Arraignment. SEC. 171. If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner, as if a warrant had been previously issued, and the offender arrested thereon.

Form of warrant. SEC. 172. The warrant for contempt may be in the following form:

Territory of Oregon, } ss:
County of

To the sheriff or any constable of said county:
In the name of the United States, you are hereby commanded to apprehend A. B., and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt, alleged to have been committed on the day of A. D. 18 , before the said justice, while engaged as a justice of the peace in judicial proceedings.

Dated this day of A. D. 18 .
J. P., Justice of the Peace.

Conviction to be entered in docket. SEC. 173. Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating

the particular circumstances of the offence, and the judgment rendered thereon, and may be in the following form: TITLE 15.

Territory of Oregon, } ss:
County of

Whereas on the day of A. D. 18 , while the undersigned, one of the justices of the peace, of the said county, was engaged in the trial of an action, between C. D., plaintiff, and E. F., defendant, in said county, A. B., of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly); and whereas the said A. B. was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas the said A. B. did not show cause against the said charge. Be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted of the contempt aforesaid, and is adjudged by the undersigned, to pay a fine of dollars (or be imprisoned, &c.)

Dated this day of A. D. 18 .
J. P., Justice of the Peace.

SEC. 174. If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice; if he be adjudged to pay a fine, process may be issued to collect the same, and when so collected, it shall forthwith be paid by the justice into the county treasury. Warrant of commitment.

TITLE XVI.

Certiorari and Proceedings thereon.

- SEC. 175. Removal of cause to district court by certiorari.
176. When affidavit for certiorari to be filed and what to contain.
177. Writ to issue upon filing affidavit and undertaking.
178. Certiorari not to stay proceedings, unless undertaking be given.
179. Service of writ, and certificate of undertaking.
180. Copy of affidavit to be served with writ.
181. Justice may be compelled to amend return.
182. When cause may be brought on to argument.
183. Judgment of district court how given.
184. Restitution when awarded.

SEC. 175. If any person shall conceive himself injured by error in any process, proceeding, judgment, or order given by any justice of the peace within this territory, it shall be lawful for such person to remove such process, proceeding, judgment, or order, to the district court as hereinafter provided. Certiorari.

SEC. 176. Within twenty days after the rendition of the judgment, or if the error be committed after judgment, then within twenty days after such error was committed, the party applying for such certiorari, his agent, or attorney, shall file in the office of the clerk of the district court, for the proper county, an affidavit stating that in his belief there is reasonable cause for granting such certiorari, for error in such judgment or proceeding (setting forth the ground of error alleged) and that the application is made in good faith, and not for the purpose of delay; and further shall Affidavit, when to be filed; what to contain.

TITLE 16. execute a written undertaking to the adverse party, with one or more sureties, to be approved by the clerk, in a sum not exceeding one hundred dollars, to the effect that he will pay all costs, that may be adjudged against him in the district court.

Writ when to issue. SEC. 177. Upon filing the affidavit and executing the undertaking mentioned in the last section, the clerk shall issue a writ of *certiorari*, directed to the justice committing the alleged error, commanding him to make return as to all the facts contained in such affidavit, and of all the proceedings in the case.

Not to stay proceedings unless undertaking be given. SEC. 178. The writ of *certiorari* shall not stay the execution of the judgment before the justice, unless the party applying therefor, his agent, or attorney, shall, in lieu of the undertaking mentioned in section one hundred and forty-three, execute a written undertaking to the adverse party, with one or more sufficient sureties to be approved by the clerk, in double the amount of the judgment and costs, rendered before the justice, to the effect that the party applying will prosecute the writ of *certiorari* to final judgment, and abide the order the court may make therein.

Service of writ, &c. SEC. 179. The writ of *certiorari* shall be served on the justice within ten days after it has been issued, and if an undertaking be executed in pursuance of the last section and a certificate of the clerk to that effect, be served on the justice, all further proceedings in law in such case shall cease, and if the execution shall have issued on such judgment, the justice shall immediately recall the same.

Copy of affidavit to be served with writ. SEC. 180. Upon the service of a writ of *certiorari* to reverse a judgment, it shall be the duty of the party, serving the same, to deliver at the same time to the justice a copy of the affidavit on which the *certiorari* was procured, and the justice shall make a special return as to all the facts contained in such affidavit and of the proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court, within ten days after the service of the writ, together with all the papers in the action; and he shall also certify the time when the writ was served upon him.

Justice may be compelled to amend return. SEC. 181. The district court shall have power to compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require.

Case when brought on. SEC. 182. When the writ of *certiorari* and return shall be filed with the clerk, the case may be brought on to argument before the district court, or judge thereof at any time thereafter, according to the statutes relating thereto.

Judgment, how given. SEC. 183. The district court or judge shall, after hearing the case, give judgment as the right of the matter may appear, without regarding technical omissions, imperfections, or defects, in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part, and issue execution as upon other judgments rendered before said court.

Restitution, when awarded. SEC. 184. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, such court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue thereon.

TITLE XVII.

Of Appeals to the District Court.

TITLE 17.

- Sec. 185.** Who may appeal.
 186. Appeal when and how taken.
 187. Appeal or stay of proceedings not allowed unless undertaking be given.
 188. Writ of restitution not to issue, unless appellant execute undertaking.
 189. Justice to stay proceedings after undertaking is filed.
 190. Justice to give certificate of appeal; stay of proceeding on execution.
 191. Appellant when to furnish district court with transcript of docket.
 192. Issue to be tried without new pleadings.
 193. Court may compel justice to give transcript, &c.
 194. Appeal when not to be dismissed for defective undertaking.
 195. Judgment against appellant, how rendered.

SEC. 185. Any person considering himself aggrieved, by any judgment or decision of a justice of the peace, except judgment by confession, may in person or by his agent, appeal therefrom to the district court of the same county where the judgment was rendered, or the decision made.

How taken. SEC. 186. Such appeal shall be taken within twenty days after the judgment is rendered, or the decision made, and shall be by filing a notice of appeal with the justice, and serving a copy thereof on the adverse party, or his attorney.

SEC. 187. No appeal shall be allowed in any case unless a written undertaking shall be executed on the part of the appellant, by one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs which may be awarded against him on the appeal; or if a stay of proceedings before the justice be claimed, an undertaking, with two or more sureties, in a sum equal to twice the amount of the judgment, to the effect that the appellant will pay the costs and judgment, provided the judgment appealed from be affirmed, or if affirmed only in part, then to the extent in which it may be affirmed.

SEC. 188. If the judgment appealed from direct the delivery of the possession of premises, in an action of forcible entry and detainer, or of a mining claim, a writ of restitution may be issued and executed unless a written undertaking be entered into, on part of the appellant, with two or more sureties, to the effect that during the possession of such premises, or mining claim by the appellant, he will not commit, nor suffer to be committed, any waste, destruction or injury thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the premises, or mining claim, from the time of the appeal until the delivery of possession thereof, and all costs of the appeal. The amount of such undertaking shall be fixed by the justice, before whom the action was tried.

SEC. 189. Upon an appeal being made, and an undertaking filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgement before the justice shall thereupon be suspended; and if in the mean time, execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed.

SEC. 190. On such certificate being presented to the officer holding the execution, he shall, forthwith, release the property of the defendant, that may have been taken on execution, and if the body of the defendant have been taken on execution, he shall be discharged from imprisonment.

Who may appeal. 2 Hill, 412.

How taken.

Undertaking to precede appeal. 6 Barb. 178; 1 Comst. 606; 2 do. 569. Ib. Stay of proceedings.

Writ of restitution, when to issue.

Stay of proceedings after filing undertaking

Certificate of appeal, stay of execution, &c.

TITLE 18. SEC. 191. On or before the first day of the term of the district court, next after the appeal have been taken, the appellant shall furnish the district court with a transcript of all the entries made in the justice's docket relating to the case, together with all the process and other papers relating to the action, and filed with the justice, which shall be certified by such justice to be correct, and upon the filing of such transcript, the district court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as herein otherwise provided.

Appellant to furnish transcript of docket, &c.
Issue, how tried.
SEC. 192. The issue before the justice shall be tried in the district court, without other or new pleadings, unless otherwise directed by the court.

Court may compel justice to give transcript.
SEC. 193. Upon an appeal being made and allowed, the district court may by rule and attachment, compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may by rule and attachment compel him to amend the same.

When appeal not to be dismissed.
SEC. 194. No appeal allowed by a justice shall be dismissed on account of the undertaking being defective, if the appellant will, before the motion is determined, execute and file in the district court, such an undertaking as he should have executed by the allowance of the appeal, and pay all costs that shall be incurred by reason of such defect.

Judgment against appellant.
SEC. 195. In all cases of appeal to the district court, if on the trial anew in such court the judgment be against the appellant in whole, or in part, such judgment shall be rendered against him and his sureties in the undertaking for the appeal.

TITLE XVIII.

Of Qualifications of Sureties.

SEC. 196. Qualifications of sureties.

197. Bail, how to justify.

198. Allowance when to be indorsed on undertaking.

Qualifications of sureties.
SEC. 196. The qualifications of sureties, on the several undertakings required by this chapter, shall be as follows:

1. Each of them shall be a resident, and householder, or freeholder within the county;

2. Each shall be worth double the amount stated in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

Bail, how to justify.
SEC. 197. For the purpose of justification, each of the sureties shall attend before the justice at the time mentioned in the notice, and may be examined on oath, on the part of the adverse party, touching his sufficiency, in such manner, as the justice in his discretion may think proper. The examination shall be reduced to writing and subscribed by the sureties, if required.

Allowance, when indorsed on undertaking.
SEC. 198. If the justice find the sureties sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon,

and file the same, and the officer shall thereupon be exonerated from all liability. **TITLE 19.**

TITLE XIX.

Of Criminal Proceedings before Justice of the Peace.

SEC. 199. Jurisdiction of justice.

200. Justice when to issue warrant.

201. Criminal cases to be entered in separate docket, and how.

202. Proceedings on return of warrant.

203. Accused may give bail.

204. Complaint to be read to accused and he be required to plead.

205. When court to try issue.

206. Proceedings when defendant pleads guilty.

207. When justice to make list of jury; striking of names therefrom.

208. When justice to direct person to strike names from list; issue of venire.

209. Duty of officer to whom venire is directed.

210. Deficiencies in jury, how supplied.

211. New jury, when to be summoned.

212. Either party may challenge for cause.

213. Oath to be administered by justice to jurors.

214. Proceedings of jury after being sworn.

215. Verdict how delivered.

216. Judgment of justice, &c.

217. Discharge of accused, when judgment for costs against complainant.

218. When person convicted may appeal to district court.

219. Judgment, how executed.

220. Jurors and witnesses liable for contempt as in civil cases.

221. Justice to make certificate of conviction.

222. Certificate, when and where to be filed.

223. Certificate and certified copy evidence.

SEC. 199. Justices of the peace shall have power to hold courts, subject to the provisions hereinafter contained, to hear, try, and determine the charges, for offences arising within their respective counties, where such jurisdiction is conferred upon them by any law of this territory.

Jurisdiction of justice.

SEC. 200. Upon complaint made to any justice of the peace by any person, that any such offence has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant, and if it shall appear that such offence has been committed, such justice shall issue his warrant, reciting the substance of the complaint, and requiring the sheriff, or constable, to whom it is directed, forthwith to arrest the accused, and to bring him before such justice, or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein to appear and give evidence at the trial.

When to issue warrant.

SEC. 201. Every justice of the peace shall keep a separate docket for criminal cases, in which he shall enter the Territory of Oregon as plaintiff, and the accused as defendant, and he shall make all such other entries as are required in civil cases.

Criminal cases how entered.

SEC. 202. On the return of warrant with the accused, the said justice shall proceed to hear, try, and determine the cause within one day, unless continued for cause.

Proceedings on return of warrant.

SEC. 203. From the time of the return of the warrant until the time of the trial, the accused may give bail, with one or more

Accused may give bail.

TITLE 19. sureties, to be approved by the justice, for his appearance, at the time fixed for the trial; or in the event of failure so to do, may be committed to jail for safe keeping, by order of said justice, or left in the custody of the arresting officer.

Warrant to be read to accused, &c. SEC. 204. The charge made against the accused as stated in the complaint, shall be distinctly read to him, and he shall be required to plead thereto, which plea the justice shall enter in his docket; if the accused refuse to plead, the justice shall enter the fact, with the plea of not guilty, in behalf of such accused.

When court to try issue. SEC. 205. If the plea of the accused be not guilty, and a trial by jury be expressly waived by him, the justice shall proceed to try such issue, and to determine the same, according to the evidence which may be produced against, and in behalf of such accused.

If defendant pleads guilty SEC. 206. If the accused shall plead guilty to such charge, the justice shall thereupon convict him of the offence charged, and render judgment thereon.

When justice to make jury list. SEC. 207. After the joining of issue, and before the justice shall proceed to an investigation of the merits of the cause, unless the accused shall expressly waive his right to a trial by jury, such justice shall make a list in writing of the names of eighteen inhabitants of the county, qualified to serve as jurors in the courts of record in this territory, from which list the complainant and accused may strike alternately one name, until each shall have stricken out six names.

When justice to direct person to strike out jurors. SEC. 208. In case the complainant or accused shall neglect to strike out such names, the justice shall direct some suitable disinterested person to do so, for either or both of the parties so neglecting; and upon such names being struck out, the justice shall issue a venire directed to the sheriff, or any constable of the county, commanding him to summon the six persons, whose names shall remain upon such list, to appear before such justice, at the time and place to be named therein, to make a jury for the trial of such offence.

Venire. SEC. 209. The officer, to whom such venire shall be delivered, shall summon such jury personally and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same with the venire, to the justice, within the time specified.

Deficiencies in jury. SEC. 210. If any of the jurors named in such venire shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the justice shall supply the deficiency by directing the sheriff, or any constable who may be present, and disinterested, to summon any of the bystanders, or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause.

New jury. SEC. 211. If the officer, to whom the venire shall have been delivered, shall fail to return the same, as thereby required, or if the jury shall fail to agree, and shall be discharged by the justice, a new jury shall be selected and summoned, in the same manner, and the same proceedings shall be had, as herein prescribed, in respect to the first jury, unless the accused shall consent to be tried by the justice, in which case, he shall proceed to the trial of the issue, as if a jury trial had been waived.

SEC. 212. In all trials for criminal offences before a justice of the peace, either party may challenge any juror for cause as in civil cases. TITLE 19. Challenge.

SEC. 213. The justice shall administer the following oath or affirmation to the jurors: Juror's oath.

You, and each of you, do solemnly swear (or affirm) that you will well and truly try this cause between the Territory of Oregon and the accused, and a true verdict give according to law, and the evidence, unless discharged by the court—So help you God.

SEC. 214. After the jury shall have been sworn, they shall sit together, and hear the proofs, and allegations in the case, which shall be delivered in public, and in the presence of the accused; and after such proof and allegations, the jury shall be kept together in some convenient place until they agree on their verdict, or are discharged by the justice; and the sheriff, or a constable shall be sworn to take charge of the jury, in like manner, as upon trials in justices' courts in civil proceedings. Jury, how to proceed.

SEC. 215. When the jurors have agreed upon their verdict, they shall deliver the same to the justice publicly, who shall enter it in his docket. Verdict, 21 Wen. 305; 5 Denio, 98.

SEC. 216. When the accused shall be tried under the provisions of this chapter, and found guilty, either by the justice or jury, or shall be convicted of the charge made against him on a plea of guilty, the justice shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require; but such imprisonment shall, in no case, exceed the limit fixed by law, for the offence charged. Judgment.

SEC. 217. Whenever the accused, tried under the preceding provisions of this chapter, either by the justice or by a jury, shall be acquitted, he shall be immediately discharged, and if the justice, before whom the trial is had, shall certify in his docket that the complaint was wilful and malicious, and without probable cause, he shall enter a judgment against the complainant to pay all the costs, which shall have accrued upon the trial, and unless he enter into an undertaking to this territory, with one or more sureties, to pay such costs in thirty days after the trial, execution shall issue therefor. Discharge of accused. costs against complainant, &c.

SEC. 218. Whenever the accused, tried under the preceding provisions of this chapter, either by the court or the jury, shall be convicted, he may appeal from the judgment of the justice to the district court of the county.—Provided, the person so convicted shall, within ten days after the judgment, enter into an undertaking, with one or more sufficient sureties, conditioned to appear before said court, and abide the judgment of the court therein; and the justice from whose judgment an appeal is taken, shall make a return of the proceedings had before him, and shall cause the warrant and return, together with any undertakings, to be filed with the clerk of the district court, on or before the first day of the term of the district court, next after the appeal is taken; and the complainant and witnesses, may also be required to enter into undertakings with or without sureties, in the discretion of the justice, to

TITLE 20. appear at said district court, at the time last aforesaid, and abide the order of the court therein.

Judgment, how executed, &c. SEC. 219. If the accused be convicted, and sentenced to be imprisoned, the judgment shall be executed by virtue of a warrant of commitment, under the hand of the justice, specifying the particulars of such judgment, and directed to the sheriff or any constable of the county in which the conviction shall be had. If such accused be convicted and adjudged to pay a fine and costs, the justice shall issue an execution to collect the same, which shall be returnable as executions in civil cases.

Penalty on jurors and witnesses for default, &c. SEC. 220. In case any person, summoned to appear before any court held by a justice of the peace, pursuant to the provisions of this chapter, as a juror or witness, shall fail to appear, or if any witness appearing, shall refuse to testify, he shall be liable to the same penalties, and may be proceeded against in the same manner, as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

Certificate of conviction. SEC. 221. Whenever any conviction shall be had before a court, held by a justice of the peace, the justice, by whom such court shall have been held, shall make a certificate of such conviction under his hand, in which it shall be sufficient, briefly to state the offence charged, and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

Ib. To be filed. SEC. 222. Within twenty days after such conviction, the said justice shall cause such certificate to be filed in the office of the clerk of the district court of the county in which the conviction shall have been had.

Ib. To be evidence. SEC. 223. Every certificate of conviction made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places of the facts therein contained.

TITLE XX.

Miscellaneous Provisions in Criminal Cases.

- SEC. 224. Assault, battery, or affray, how punishable.
- 225. When indictable.
- 226. Justice not having jurisdiction, how to proceed.
- 227. Powers of justice for preserving public peace.
- 228. Breach of recognizance to be certified to district court.
- 229. Fines to be paid county treasurer.
- 230. Penalty for neglecting to pay over money collected for fines.
- 231. County when to pay costs.
- 232. Justice may require complainant to pay costs.

Assault, &c., how punished. SEC. 224. No assault, battery, or affray, shall be indictable, but all such offences shall be prosecuted and determined in a summary manner by complaint before a justice of the peace, and on conviction thereof, the offender may be punished by fine not less than five nor more than one hundred dollars, according to the nature of the offence.

Certain assaults, indictable. SEC. 225. The last section shall not extend to the trial of any case of riot, or unlawful assembly, nor to any assault with intent to murder, kill, maim, rob, or commit a rape, but such offences shall be punishable by indictment in the district court.

Justice, how to proceed. SEC. 226. If, in the progress of any trial before a justice of the

peace, under the provisions of this chapter, it shall appear that the accused ought to be put upon his trial for an offence, not cognizable before a justice of the peace, such justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the district court.

TITLE 20. not having jurisdiction.

SEC. 227. Justices of the peace shall have power to cause all laws, made for the preservation of the public peace to be kept, and in the execution of that power, may cause persons to be apprehended, and require them to give security to keep the peace, in the manner provided by law. And any justice may summon to his assistance all persons present, whose duty it shall be to aid him in preserving the peace, and in arresting and securing the offenders, and any person, who shall when summoned to aid in arresting and securing an offender, refuse to give his assistance shall pay a fine, not more than twenty, nor less than five dollars, for the use of the county.

Powers of justice to preserve public peace.

SEC. 228. In case of the breach of any recognizance, or undertaking, entered into in a criminal case before a justice of the peace, the same shall be certified by the justice, and returned to the district court to be proceeded in according to law.

Breach of recognizance.

SEC. 229. All fines, imposed by virtue of the provisions of this chapter, or any part thereof, collected by any justice of the peace, sheriff, or constable, shall within thirty days after the receipt thereof, be paid over to the county treasurer, to be distributed according to law.

Fines to be paid county treasurer.

SEC. 230. If any officer who shall have received any such fine, or any part thereof, shall neglect to pay the same, pursuant to the foregoing provision, it shall be the duty of the prosecuting attorney immediately to commence an action therefor, and to prosecute the same diligently to effect.

Penalty for neglecting.

SEC. 231. If any person accused shall, upon trial before a justice of the peace, be acquitted, and the complainant be not adjudged to pay costs, as provided in section two hundred and seventeen, the costs of prosecution on such a case shall be paid by the county; and in all cases when the person accused, shall be convicted, but if the costs of prosecution cannot be collected from him, such costs shall be paid by the county.

County when to pay costs.

SEC. 232. The justice may, if he deem proper, require any complainant to give security for costs, as in civil cases, and if he refuse the justice may dismiss the complaint.

Justice may require complainant to pay costs.

FORMS IN CIVIL ACTIONS, IN JUSTICES' COURTS.

The following, or equivalent forms may be used by justices of the peace in civil actions, and proceedings under this chapter; to wit:

FORM OF A SUMMONS.

Territory of Oregon, } ss:
County of

To the sheriff, or any constable of said county:

In the name of the United States, you are hereby commanded to summon C. D., if he be found in your county, to be and appear before me.

Form of summons.

TITLE 20. fore the undersigned, a justice of the peace, in and for said county, on the day of , 18 , at o'clock in the noon, at his office in , to answer to A. B., in a civil action, and have you then and there this writ.
 Given under my hand this day of , 18 .
 J. P., Justice of the Peace.

FORM OF A WARRANT.

Territory of Oregon, } *ss:*
County of
 To the sheriff or any constable of said county:
 In the name of the United States, you are hereby commanded to take the body of C. D., if he be found within your county, and bring him forthwith before the undersigned, one of the justices of the peace, in and for said county, at his office in , to answer A. B., in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff, his agent or attorney; and have you then and there this writ.
 Given under my hand this day of , 18 .
 J. P., Justice of the Peace.

FORM OF SUBPENA.

Territory of Oregon, } *ss:*
County of
 To the sheriff, or any constable of said county:
 In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace, in and for the said county, on the day of , 18 , at o'clock in the noon, at his office in , to give evidence in a certain cause, then and there to be tried between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff (or defendant as the case may be).
 Given under my hand, this day of , 18 .
 J. P., Justice of the Peace.

FORM OF A VENIRE FOR A JURY.

Territory of Oregon, } *ss:*
County of
 To the sheriff, or any constable of said county:
 In the name of the United States, you are hereby commanded to summon six good and lawful men, of your county, to be, and appear before the undersigned, one of the justices of the peace in, and for said county, on the day of , 18 , at o'clock, in the noon of said day, at his office in , to make a jury, for the trial of a civil action, between A. B., plaintiff, and C. D., defendant, and have you then and there this writ.
 Given under my hand, this day of , 18 .
 J. P., Justice of the Peace.

FORM OF EXECUTION.

TITLE 20.

Territory of Oregon, } *ss:*
County of
 To the sheriff, or any constable of said county:
 Whereas judgment against C. D., for the sum of dollars, and for dollars, costs of suit, was recovered on the day of , 18 , before the undersigned, one of the justices of the peace, in and for said county, at the suit of A. B.: These are therefore in the name of the United States, to command you to levy on the goods and chattels of the said C. D., (excepting such as the law exempts,) and make sale thereof according to law, to the amount of the said sum, and the costs upon this writ, and the same return to me within thirty days, to be rendered to the said A. B., for his debt, interest and costs.
 Given under my hand, this day of , 18 .
 J. P., Justice of the Peace.

FORM OF EXECUTION AGAINST THE BODY.

Territory of Oregon, } *ss:*
County of
 To the sheriff, or any constable of said county:
 Whereas judgment against C. D., for the sum of dollars, and for dollars, costs of suit, was recovered on the day of , 18 , before the undersigned, one of the justices of the peace, in and for said county, at the suit of A. B., and an execution against his property, returned unsatisfied: These are therefore in the name of the United States to command you, to take the body of the said C. D., and him convey and deliver to the keeper of the jail of the said county, who is hereby commanded to receive and keep the said C. D. in safe custody in prison, until the aforesaid sum, and all legal expenses, be paid, and satisfied, or until he be discharged therefrom by due course of law, and of this writ make due return within thirty days.
 Given under my hand, this day of , 18 .
 J. P., Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION.

Territory of Oregon, } *ss:*
County of
 To the sheriff, or any constable of said county:
 Whereas judgment against C. D., for the sum of dollars, and for dollars costs of suit, was recovered on the day of , 18 , before the undersigned, one of the justices of the peace, at the suit of A. B.; and whereas on the day of , 18 , E. F. became surety to pay the said judgment and costs in month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C. D. and E. F. have failed. These are therefore in the name, &c., (as in the common form).

TITLE 20.

FORM OF ORDER IN REPLEVIN.

Territory of Oregon, } ss:
County of

Form of order in replevin.

To the sheriff, or any constable of said county :
In the name of the United States, you are hereby commanded to take the personal property, mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand, this day of , 18 .
J. P., Justice of the Peace.

FORM OF A WRIT OF ATTACHMENT.

Territory of Oregon, } ss:
County of

Ib. Of writ of attachment.

To the sheriff, or any constable of said county :
In the name of the United States, you are commanded to attach and safely keep the goods and chattels, moneys, effects, and credits of C. D., (excepting such as the law exempts,) or so much thereof as shall satisfy the sum of dollars with interest, and costs of suit, in whosoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached may be subject to further proceedings thereon, as the law requires; and of this writ make legal service, and due return.

Given under my hand, this day of , 18 .
J. P., Justice of the Peace.

FORM OF SUMMONS IN FORCIBLE ENTRY AND DETAINER.

Territory of Oregon, } ss:
County of

Ib. Of summons in forcible entry and detainer

To the sheriff, or constable of said county :
Whereas A. B., of hath exhibited unto the undersigned, one of the justices of the peace, in and for said county, a complaint against C. D., for a forcible entry and detainer of the following premises; to wit, ; therefore in the name of the United States, you are hereby commanded to summon the said C. D., if he be found in your county, to appear before the undersigned on the day of , 18 , at o'clock in the noon, at his office in , then and there to make answer to and defend against the complaint aforesaid; and you are also hereby commanded to serve a copy of the said complaint, on the said C. D., and of this writ make due return, with your doings thereon.

Given under my hand, this day of , 18 .
J. P., Justice of the Peace.

FORM OF WRIT OF RESTITUTION IN FORCIBLE ENTRY AND
DETAINER.

TITLE 20.

Territory of Oregon, } ss:
County of

To the sheriff, or any constable of said county.

Whereas A. B. did make complaint in writing to the undersigned, a justice of the peace in and for said county, against C. D., of the said county, that he had been guilty of a forcible entry and detainer, of a certain tract of land (or other possessions) of the said A. B., and whereas a jury was empannelled and sworn to inquire of said complaint, and did return their verdict, that the said C. D. was guilty of a forcible entry and detainer of the following described tract of land; to wit (here describe the premises, of which the defendant is found guilty of forcibly entering and detaining); and whereas judgment was entered thereon by said justice, and that the said A. B. should have restitution of the premises; therefore, in the name of the United States, you are hereby commanded to cause the said C. D. to be forthwith removed from the premises aforesaid, and that the said A. B. have peaceable restitution of the same, and also that you levy of the goods and chattels of C. D. found in your county, the sum of dollars being the amount of costs, on the trial aforesaid, together with dollars for this writ and also your own fees, and make return of this writ within thirty days next after the date hereof.

Form of writ of restitution, &c.

Given under my hand, this day of , 18 .
J. P., Justice of the Peace.

FORM OF UNDERTAKING FOR AN ARREST.

Whereas an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for county, for a warrant to arrest C. D., defendant, founded upon an affidavit of the said plaintiff, setting forth that, &c. (here state the cause for the arrest): Now therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D. in the sum of dollars, to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of dollars.

Ib. Of undertaking for an arrest.

Dated this day of , 18 .

A. B.
E. F.

FORM OF UNDERTAKING IN REPLEVIN.

Whereas, A. B., plaintiff, has commenced an action before J. P., one of the justices of the peace in and for county, against C. D., defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff; to wit (here set forth the property claimed): Now, therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto C. D. in the sum of dollars, for the prosecution of the action,

Ib. Of undertaking in replevin.

TITLE 20. for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the day of , 18 . A. B. E. F. G. H.

FORM OF UNDERTAKING IN ATTACHMENT.

Form of undertaking in attachment.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace, in and for county, for a writ of attachment, against the personal property of C. D., defendant (a foreign corporation, a non-resident, or because he has assigned, secreted, &c.): Now, therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D. in the sum of dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment, not exceeding the sum of dollars.

Dated the day of , 18 . A. B. E. F.

FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT.

Form of discharge attachment.

Whereas, a writ of attachment has been issued by J. P., one of the justices of the peace, in and for county, against the personal property of C. D., defendant, in an action in which A. B. is plaintiff: Now, therefore, we, C. D., defendant, E. F. and G. H., acknowledge ourselves bound unto J. K., constable, in the sum of dollars, (double the value of the property,) engaging to re-deliver the property attached; to wit (here set forth a list of articles attached): or pay the value thereof to the sheriff or constable, to whom execution upon a judgment obtained by the plaintiff, in the aforesaid action, may be issued.

Dated this day of , 18 . C. D. E. F. G. H.

FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE, ON CLAIM OF PROPERTY BY A THIRD PERSON.

Form of indemnify constables, on claim of property by a third person.

Whereas L. M. claims to be the owner of, and have the right to the possession of certain personal property; to wit (here describe it): which has been taken by J. K., constable, in county, upon an execution issued by J. P., justice of the peace, in and for the county of upon a judgment obtained by A. B., plaintiff, against C. D., defendant: Now therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto the said J. K., constable, in the sum of dollars, to indemnify the said J. K. against such claim.

A. B. E. F. G. H.

FORMS OF PROCEEDINGS IN CRIMINAL CASES.

TITLE 20.

The following or equivalent forms may be used by justices of the peace, in criminal proceedings under this chapter:

FORM OF WARRANT.

Territory of Oregon, } ss: County of

To the sheriff, or any constable of said county:

Whereas A. B. has this day complained in writing, under oath, to the undersigned, one of the justices of the peace in and for said county, that on the day of , 18 , at in said county (here insert the substance of the complaint, whatever it may be): Therefore, in the name of the United States, you are commanded forthwith to apprehend the said C. D., and bring him before me to be dealt with according to law.

Given under my hand, this day of , 18 . J. P., Justice of the Peace.

FORM OF AN EXECUTION.

Territory of Oregon, } ss: County of

To the sheriff, or any constable of said county:

Whereas at a justice's court held at my office in said county, for the trial of C. D., for the offence hereinafter stated, the said C. D. was convicted of having on the day of , 18 , in said county committed, (here state the offence,) and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of dollars, and dollars costs; and whereas the said fine and costs have not been paid: These are therefore in the name of the United States to command you to levy on the goods and chattels, &c., (as in execution in civil cases.)

FORM OF CERTIFICATE OF CONVICTION.

Territory of Oregon, } ss: County of

At a justice's court held at my office in said county, before me, one of the justices of the peace, in and for said county, for the trial of C. D., for the offence hereinafter stated, the said C. D. was convicted of having, on the day of , 18 , at in said county of (here insert the offence,) and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of dollars, (or be imprisoned as the case may be,) and the said fine has been paid to me.

Given under my hand, this day of , 18 . J. P., Justice of the Peace.

TITLE 20.

FORM OF COMMITMENT UPON SENTENCE.

Territory of Oregon, }
County of } ss:

To any constable, and the keeper of the common jail of said county:

Form of commitment on sentence.

Whereas at a justice's court, held at my office in said county, for the trial of C. D., for the offence hereinafter stated, the said C. D., was convicted of having, on the day of , 18 , in said county committed, (here state the offence,) and upon conviction the said court did adjudge and determine that the said C. D. should be imprisoned in the common county jail of said county, for days: Therefore, you the said constable are commanded, in the name of the United States, forthwith to convey and deliver the said C. D. to the said keeper; and you the said keeper are hereby commanded to receive the said C. D. into your custody in the said jail, and him there safely keep until the expiration of said days, or until he shall thence be discharged, by due course of law.

Given under my hand, this day of , 18 .
J. P., Justice of the Peace.

FORM OF WARRANT TO KEEP THE PEACE.

Territory of Oregon, }
County of } ss:

Ib. Of warrant to keep the peace.

To the sheriff, or any constable of said county:

Whereas, A. B. has this day complained in writing, and under oath to the undersigned, one of the justices of the peace, in and for said county, that he has just cause to fear, and does fear that C. D. late of said county, will (here state the threatened injury, or violence as sworn to): Therefore, in the name of the United States, you are commanded to apprehend the said C. D., and bring him forthwith before me, to show cause why he should not give surety to keep the peace, and be of good behavior towards all the people of this territory, and the said A. B. especially, and further to be dealt with according to law.

Given under my hand, this day of , 18 .
J. P., Justice of the Peace.

FORM OF COMMITMENT TO ANSWER IN THE DISTRICT COURT.

Territory of Oregon, }
County of } ss:

Ib. Commitment to answer in district court.

To any constable, and to the keeper of the common jail of said county:

Whereas, on the day of , 18 , A. B. made complaint in writing, and on oath, before the undersigned, one of the justices of the peace, in and for said county, charging C. D. with having on the day of , 18 , committed the crime of larceny, (or other crime, as the case may be,) and the said C. D.

TITLE 20.

having been brought before and examined by me, and it being sufficiently proved to me, that the said C. D. has in said county, committed the crime of larceny (or other crime) by stealing one bay horse, of the value of dollars, of the goods and chattels of the said A. B.; and he, the said C. D. having failed to give bail for his appearance to answer at the next term of the district court, in the sum of dollars, as required by me: Therefore, in the name of the United States, you, the said constable, are commanded forthwith to convey and deliver the said C. D. to the said keeper; and you, the said keeper, are hereby commanded to receive the said C. D. into your custody, in the said jail, and him there safely keep, until he be discharged by due course of law.

Given under my hand this day of , 18 .
J. P., Justice of the Peace.

FORM OF COMMITMENT WHEN JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION OF THE CASE.

Territory of Oregon, }
County of } ss:

Form of commitment. When justice has not jurisdiction.

To any constable, and to the keeper of the common jail of said county:

Whereas C. D., of &c., has been brought this day before the undersigned, one of the justices of the peace, in and for said county, charged on the oath of A. B., with having on the day of , 18 , in said county, committed the offence of (here state the offence charged in the warrant) and in the progress of the trial of said charge, it appearing to the said justice, that the said C. D. has been guilty of the offence of (here state the new offence found on the trial, committed at the time and place aforesaid, of which offence the justice has not final jurisdiction); and whereas the said C. D. has failed to give bail in the sum of dollars, for his appearance to answer at the next term of the district court, as required by me: Therefore, in the name of the United States, &c. (as in the last form).

FORM OF SEARCH WARRANT.

Territory of Oregon, }
County of } ss:

To the sheriff, or any constable of said county:

Whereas A. B. has this day made complaint on oath, to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels; to wit, (here describe them,) the property of the said A. B. have, within days past, (or were on the day of ,) by some person, or persons unknown, been stolen, taken and carried away out of the possession of said A. B. in the county aforesaid; and also that the said A. B. verily believes that the said goods or a part thereof are concealed in or about the house of C. D. in said county (describing the premises to be searched): Therefore in the name of

Ib. Form of search warrant.

CHAPTER 1. the United States, you are commanded that with the necessary and proper assistance, you enter into the said house (describe the premises to be searched) and then diligently search for the said goods, and chattels, and if the same or any part thereof be found on such search, bring the same, as also the said C. D., forthwith before me to be disposed of according to law.

Given under my hand, this _____ day of _____, 18____.
J. P., Justice of the Peace.

FORM OF RECOGNIZANCE TO APPEAR AT DISTRICT COURT.

Form of recognizance to appear at district court.

Be it remembered that on the _____ day of _____, 18____, before me a justice of the peace in and for said county, personally came C. D. and E. F., and acknowledge themselves each to owe the Territory of Oregon _____ dollars. The condition of this recognizance is such that if the said C. D. shall personally appear at the district court of said county, on the first day of the next term thereof, then and there to answer a charge of, (here name the offence with which the party is charged,) and abide the judgment of said court, and not depart without leave of the same; then this recognizance shall be void: otherwise in full force.

C. D.
E. F.

Taken and acknowledged before me, this _____ day of _____, 18____.
J. P., Justice of the Peace.

SEC. 293. This act shall take effect and be in force from and after the first day of May next.

Passed January 12th, 1854.

AN ACT TO ESTABLISH A PROBATE COURT AND DEFINE ITS DUTIES AND POWERS.

CHAPTER I.

PROBATE COURT.

- SEC. 1. Election of judge of probate, his term of office.
2. Title of probate court; its jurisdiction.
3. Election of probate judges how conducted.
4. Judge when to take oath of office; form of oath, bond and action thereon.
5. Certain officers not eligible.
6. Power of judge of probate.
7. Extent of jurisdiction.
8. May grant administration on estate of prisoners for life.
9. Power of judge to cite witnesses, trustees, &c.
10. Jurisdiction over estates of persons under guardianship, &c.
11. Issue of process by judge of probate; seal of office.
12. Sheriffs, &c., to execute process.
13. Court of probate a court of record.
14. Judge of probate may punish for contempt.
15. Court of probate when and where to be held.
16. Cases when judge of probate shall not act as judge.
17. Administration in such case granted by another judge of probate.

CHAPTER 1.

- SEC. 18. Judge of probate when not to act, or practice as attorney, &c.
19. Certain affidavits to be taken only by judge of probate.
20. Appeal from decision of judge of probate, to district court.
21. Bond of appellant; where to be filed.
22. Judge may grant an appeal with or without bond, when an insane person or minor is a party.
23. Appeal when and where cognizable; proceedings on appeal.
24. Transcript of proceedings to be sent to appellate court.
25. Stay of proceedings after appeal allowed.
26. Appellate court may affirm or reverse decree.
27. Trial of facts on appeal.
28. Costs in probate court.
29. When judge of probate may issue commission to justice to administer oath.
30. Probate of will, &c., not to be granted after twenty years.
31. Act when to take effect.

SEC. 1. Be it enacted by the Legislative Assembly of the Territory of Oregon, That there shall be elected by the qualified electors, in each of the organized counties of this territory, at the general election, one judge of probate, who shall have the qualification of a voter. The person duly elected and qualified, shall hold his office for three years, unless sooner removed for mal-conduct in office, and until his successor be elected and qualified.

SEC. 2. The court established by this act, in each of the counties of this territory, shall be styled "The Probate Court of the county of _____," with such jurisdiction as may be prescribed to such courts by the laws of the territory.

SEC. 3. All elections for judges of probate shall be conducted and returns made, as prescribed by the act regulating general elections in this territory; and the clerk of the board of county commissioners shall issue a certificate of election to the person duly elected under the provisions of this act.

SEC. 4. Every person elected a judge of probate in this territory, shall, within fifteen days after receiving his certificate, take and subscribe the following oath:

I, E. B., do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States, and the laws of this territory; that I will administer justice without respect to persons; and faithfully and impartially discharge and perform all duties incumbent upon me as a judge of probate, according to the best of my abilities.

Signed, _____ E. B.
Territory of Oregon, county of _____ ss:
Subscribed and sworn to before me, this, _____ day of _____, 18____.
G. D.,
Clerk of the board of county commissioners, in and for said county.

Said oath shall be indorsed on the certificate of election, and filed, together with the certificate, in the office of the clerk of the board of county commissioners for the proper county; and every person elected a judge of probate shall, at the time of filing his oath of office with the clerk, enter into bonds with the board of commissioners for said county, with good security, to be by the said commissioners approved, in the sum of five hundred dollars, conditioned that he will deliver over to his successor all files, papers and books belonging to the probate office; that he will keep in

CHAPTER 1. good order the records of his court, with faithful and correct alphabets and indexes to the same, and perform all other duties belonging to his office; said bond shall be filed in the office of the clerk of the board of county commissioners. And any person aggrieved by a breach of the conditions thereof, may, by suit upon the bond in the district court for the proper county, have judgment against the judge of probate and his securities, for such sum as he may show himself entitled to, with costs and interest, at the discretion of the court.

Certain officers not eligible. SEC. 5. No sheriff, coroner, clerk of the district court, county commissioner, or clerk of the board of county commissioners shall be eligible to the office of judge of probate.

Power of judge. SEC. 6. The judge of probate for each county, shall have and possess the following powers: Original jurisdiction in all cases relating to the probate of last wills and testaments, the granting of letters testamentary and of administration, and revocation of the same, the appointing or displacing guardians over orphan minors, spendthrifts, and persons of unsound minds, and the binding orphan minors as apprentices: the settlement and allowance of all accounts against estates, and of executors, administrators and guardians; the hearing and determining all disputes and controversies respecting wills; the right to executorship, administration or guardianship, and respecting duties and accounts of executors, administrators or guardians; the hearing and determining all disputes and controversies between master and apprentice; the hearing and determining all suits and other proceedings instituted against executors and administrators upon any demand against the estate of their testator or intestate.

Extent of jurisdiction. SEC. 7. His jurisdiction shall extend over the estates of all persons deceased, who, at the time of their decease were inhabitants of, or residents in, the same county, and all who shall die without the territory, leaving any estate within said county, or whose estate may afterwards be found in said county.

Administration on estate of prisoners for life. SEC. 8. He may, upon the application of the party or parties interested, grant administration on the estate of any person who, by due course of law, shall be under sentence of imprisonment for life, in the penitentiary, whether by commutation of a previous sentence, or otherwise.

Power to cite witnesses, trustees, &c. SEC. 9. He shall have authority to cause to come before him by citation, all and every person or persons whom he may deem it necessary to examine as witnesses, or who as executors, administrators, guardians or otherwise, shall be intrusted with, or in any way accountable for any lands, tenements, goods or chattels belonging to any minor, orphan, or person of unsound mind, or the estate of any deceased person; and may examine on oath or affirmation, such person or persons, touching any such estate or guardianship, before him; and any such person summoned to appear before him, who shall refuse so to appear, or when present shall refuse to be examined as a witness, touching such estate or guardianship, shall be liable to be punished as for contempt.

Jurisdiction. SEC. 10. He shall have jurisdiction in all matters relating to the estates of such persons as are under guardianship, and the settlement of the same; and his jurisdiction shall extend to whatever

CHAPTER 1. else may by law rightfully come under his cognizance; and when a case shall originally be within the jurisdiction of the probate court of two or more counties, the court which shall first take cognizance thereof, by the commencement of proceedings, shall retain the same throughout exclusively.

Issue of process. SEC. 11. He shall have authority to issue whatever process may be necessary for the discharge of his official duties, and he shall have a seal of office.

Sheriffs, &c., to obey process. SEC. 12. Sheriffs, their deputies, coroners and constables shall serve and execute all legal warrants and processes, by him directed to them.

Court to be court of record. SEC. 13. That the court established by this act, shall be a court of record, and shall keep just and faithful record of its proceedings, and the judge thereof shall have the care and custody of all files, papers and books belonging to the same, and record all wills and other instruments in writing, required by law to be put on record.

Contempt, how punished. SEC. 14. Contempt of his authority or office, in any cause on hearing before him, may be punished in like manner, as such contempt may be punished in the district court.

Court, when and where to be held. SEC. 15. The judge of probate for each county in this territory, shall hold a court at the seat of justice, or usual place of holding the district court in such county, on the first Tuesday of every month.

When judge shall not act. SEC. 16. When any judge of probate shall be interested as heir, legatee, creditor, debtor, or within the degree of kindred, by means of which by law he might by any possibility be heir to any part of the estate of any person deceased, leaving property to be administered in his county, such estate shall be settled in the probate court for the most ancient adjoining county. If his interest commence at any time after he shall have regularly assumed jurisdiction of such estate, further proceedings therein shall be transferred to the probate court held in the most ancient adjoining county.

Administration granted by another judge. SEC. 17. The will of any such deceased person may be there proven or administration granted, as the case may require, and all subsequent proceedings had thereon, in like manner as if the deceased had died in that county.

Judge not to practice, &c. SEC. 18. No judge of probate shall have a voice in judging and determining, nor be attorney or counsellor, in or out of court, in any civil action whatever, which may depend on or relate to any sentence or decree made by him in his office; nor be attorney or counsellor in any civil action, for or against any executor, administrator or trustee, under any last will and testament, or guardian, as such within his county.

Taking and filing affidavits. SEC. 19. All affidavits required to be taken in relation to, or in anywise pertaining to any proceeding in the probate court, shall be administered by the judge of probate, and by him recorded or filed as the case may be, in his office.

Appeal. SEC. 20. Any person aggrieved by any order, allowance, sentence, decree or denial of any judge of probate, or any other act in his official capacity, may appeal therefrom to the district court, within and for the same county: *Provided*, the appeal be taken within twenty days from the date of the proceedings appealed from.

Bond of appellant. SEC. 21. The appellant shall make his bond to the adverse party

CHAPTER 1. for such sum and with such security as the judge shall approve, conditioned for the prosecution of his appeal, with effect, at the next term of the district court for the same county, and in case he fail in such prosecution, to pay all costs and damages already accrued, and such costs as may be taxed against him by said district court. Said bond shall be filed in the probate office, for the use of the adverse party.

Granting an appeal when minor, &c., a party.

SEC. 22. In case of any controversy wherein an insane person, or other person under guardianship is a party, the probate court may, at its discretion, grant an appeal on the part of the ward, without bond being given as aforesaid: *Provided*, that all other requirements in relation to appeal be complied with. This act shall not be so construed as to require any executor or administrator to enter into bonds to entitle him to an appeal.

Appeal, when and where cognizable.

SEC. 23. Appeals shall be cognizable at the next term of the district court, which shall be holden after the expiration of twenty-four days, after such appeal shall have been allowed, and the appellant shall file the reasons for his appeal with the court appealed from, and shall serve all parties who have appeared before the judge of probate in the case, with a copy of such reasons, under the official signature of the probate judge, fifteen days before the sitting of the court, to which the appeal is made.

Transcript, &c. to appellate court.

SEC. 24. When an appeal is granted, the judge of the court appealed from shall transmit to the clerk of the district court, under his official signature, a transcript of the records and proceedings relative to the cause, together with the original papers relating thereto.

Stay of proceedings after appeal allowed.

SEC. 25. After an appeal is allowed, the bond filed, and the reason served in compliance with this act, all further proceedings in relation to the order, decree, sentence, or denial appealed from, shall cease until the determination of the court or courts above.

Court may reverse or affirm decree.

SEC. 26. The court above may reverse or affirm, in whole or in part, the sentence or proceeding appealed from, and may make such decree or order thereon, as the judge of probate should have made, and shall remit the case to the court from whence it came, for further proceedings.

Trial of facts.

SEC. 27. If, upon hearing an appeal in the court above, any question of fact shall occur that is proper for a jury to try, the court may, at its discretion, cause it to be tried upon an issue to be formed for that purpose, under the direction of the court.

Costs.

SEC. 28. In all cases that are contested in a probate court, the said court may, at its discretion, award costs to either party, to be paid by the party in default, and may issue execution for the same, in like manner as such executions are issued out of the district court.

Issue of commission to justice to administer oath.

SEC. 29. If any person required to make oath to any instrument in writing, which is to be used before a judge of probate, shall be unable to attend by reason of infirmity or otherwise, or shall reside without the county where the court of probate is holden, it shall be lawful for said judge, by commission issued for the purpose, to authorize any disinterested justice of the peace to administer such oath, who shall return a certificate thereof to the judge, together with the commission, and instruments in writing annexed.

SEC. 30. No probate of any last will, nor administration on the estate of any person deceased, shall be originally granted, after the expiration of twenty years from his decease.

SEC. 31. This act shall take effect and be in force from and after the first day of May next.

Passed December 15th, 1853.

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Probate not to be granted after twenty years.
Act when to take effect.

AN ACT RESPECTING EXECUTORS, ADMINISTRATORS, AND THE DISTRIBUTION OF REAL AND PERSONAL ESTATE.

CHAPTER I.

EXECUTORS, ADMINISTRATORS, AND THE DISTRIBUTION OF REAL AND PERSONAL PROPERTY.

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- 54. Letters of administration not to be granted non-residents.

Letters testamentary, where granted.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That upon the decease of any inhabitant of this territory, letters testamentary, or letters of administration on his estate, shall be granted by the probate court for the county, in which the mansion house or place of abode of the deceased was situated, at the time of his death. If he had no mansion house, or place of abode in this territory at the time of his death, and be possessed of lands in this territory, letters may be granted in the county in which such land, or a part thereof lies. If the deceased had neither mansion house, place of abode, nor lands in this territory at the time of his death, letters testamentary or of administration, may be granted in the county where he died, or in which the greater part of his estate may be. If he died out of this territory, having neither mansion house, place of abode, or lands in this territory, such letters may be granted in any county where his estate or a part of it may be.

Trials, &c., where had.

SEC. 2. All orders, settlements, trials, and other proceedings intrusted by this act, to the probate court, shall be had or made in the county in which letters testamentary or of administration were granted.

Persons incompetent to act.

SEC. 3. No judge of probate in his own county, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator; nor shall the executor of an executor, in consequence thereof, be executor of the first testator, provided that this chapter shall not be so construed as to prevent a widow under twenty-one years of age from acting as the executrix or administratrix of the deceased husband's estate.

Letters of administration to whom granted, and in what order.

SEC. 4. Letters of administration shall be granted:

1. To the widow or next of kin, or both, as the judge of probate shall think fit, and if they do not voluntarily either take or renounce the administration, they shall, if resident, in the county, be cited for that purpose by the judge;
2. If persons so entitled to administration are incompetent or evidently unsuitable for the discharge of the trust, or if they neglect without any sufficient cause, for sixty days after the decease of the intestate, to take administration of his estate, the judge of probate may grant letters to one or more of the principal creditors, if there be any competent, and willing to undertake the trust;
3. If there be no such creditor, the judge of probate shall commit administration to such other person as he shall think fit; *Provided, however,*
4. That if the deceased were a married woman, administration of her estate shall, in all cases be granted to her husband, if competent and willing to undertake the trust, unless by force of a marriage settlement, or otherwise, she shall have made some testamentary disposition of her separate estate, or some other provision which

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shall render it necessary or proper to appoint some other person to administer her estate.

When executors named in will refuse to act.

SEC. 5. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein; if all such persons refuse to act or be disqualified, letters of administration with the will annexed, shall be granted to the person to whom administration would have been granted, if there had been no will.

Co-executor not to act without giving bond.

SEC. 6. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle except those who give bond.

Bond.

SEC. 7. Every executor or administrator, before entering upon the execution of his trust, shall give bond, with sufficient sureties, resident in this territory in such sum as the judge of probate shall order, payable to the Territory of Oregon. The form of the bond shall be joint and several, and the penalty shall not be less than twice the value of the estate; which value shall be ascertained by the probate judge, by examination on oath of the party applying, and of any other persons he may think proper to examine. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of his trust, according to law.

Penalty and condition. 2 Hill 226; 2 Barb. Ch. 427; 5 Barb. 451.

SEC. 8. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

Executors to give separate bonds.

SEC. 9. If the executor be a minor, or absent from the territory, letters of administration, with the will annexed, shall be granted during the time of such minority or absence, to some other person, unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor, until the disqualification shall be removed, when such minor having arrived at full age, or such absentee shall be admitted as joint executor with the former, on giving bond as before required.

When executor is a minor or absentee.

SEC. 10. Every person who shall be appointed administrator, with the will annexed, shall, before entering upon the execution of his trust, give bond to the Territory of Oregon in like manner, and with like condition, as is required of an executor; provided that when such administrator shall be appointed in pursuance of the last preceding section, there shall be added to such condition in his bond, as follows: and to deliver the letters of administration into the probate court, in case such minor shall become of full age, or said absent executor return, and obtain letters testamentary on the estate.

Bond of executor appointed with will annexed.

SEC. 11. When by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary, or of administration, the judge of probate may, in his discretion, appoint a special administrator to collect and preserve the effects of the deceased, and in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust, until he shall be otherwise ordered by the district court, to which such appeal is taken.

Appointment of special administrator.

SEC. 12. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in

Ib. His bond.

CHAPTER 1. such sum as the judge of probate shall order, payable to the Territory of Oregon, with condition as required of an executor, or administrator, in other cases, to make and return into the probate court within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge; and that he will truly account, on oath, for all the goods, chattels, debts and effects of the deceased, that shall be received by him as such special administrator, whenever required by the judge of probate, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

Duties and powers of special administrators

SEC. 13. Such special administrator shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator, who shall thereafter be appointed, and for that purpose may commence and maintain suits as an administrator; and may also sell such perishable and other goods as the judge of probate shall order to be sold, and he shall be allowed such compensation for his services, as the judge of probate shall deem reasonable.

Ib. Power, &c., to cease on granting letters testamentary.

SEC. 14. Upon granting letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute any suit, commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

Special administrators not liable to creditors of deceased.

SEC. 15. Such special administrator shall not be liable to an action by any creditor of the deceased; and the time of limitation for all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in usual form, in like manner, as if such special administration had not been granted.

Application for letters of administration.

SEC. 16. Application for letters of administration shall be made by petition in writing, signed by the applicant or his attorney, and filed in the probate court, which petition shall set forth the facts essential to give the court jurisdiction of the case; and such applicant, at the time of making such application, shall make an affidavit, stating to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased; that the deceased died without a will; that he will make a perfect inventory of, and faithfully administer all the estate of the deceased, pay the debts, as far as the assets will extend and the law direct, and account for and pay over all assets which shall come to his possession or knowledge.

Affidavit by administrator de bonis non.

SEC. 17. A similar affidavit, with such variations as the case may require, shall be made by administrators, of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the granting of letters of administration.

Oath of administrator, &c.

SEC. 18. Every administrator with the will annexed, and executor, at the time letters are granted him, shall make an affidavit that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator; pay the debts and legacies so

far as the assets will extend, and the law direct, render just accounts, and faithfully perform all things required by law touching such executorship or administration.

CHAPTER 1.

SEC. 19. No judge of the probate court, no sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as security in any bond required to be taken by this act.

Certain officers not to be sureties.

SEC. 20. The judge of probate shall take special care to take as sureties, men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy himself, he may take testimony, and examine on oath the applicant or persons offered as sureties.

Judge to take good security.

SEC. 21. The judge of probate shall record, in a well-bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular files.

Judge to record executors', &c., bonds.

SEC. 22. The judge of probate shall record in a well-bound book kept for that purpose, all letters testamentary and of administration, before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded.

Ib. Letters testamentary.

SEC. 23. Copies of such letters, or copies of the records thereof, certified by the probate judge, and under the seal of the probate court, shall be received as evidence in any court in this territory.

Certified copies evidence.

SEC. 24. Letters testamentary, issued to the executors under the provisions of this act, may be in the following form:

Territory of Oregon, } ss:
County of }

To all persons to whom these presents shall come, greeting:

Know ye, the last will and testament of A. B., deceased, hath in due form of law been exhibited, proven and recorded in the probate court, for _____ county, a copy of which is hereto annexed; and inasmuch as it appears that C. D. hath been appointed executor in and by said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that said last will and testament may be executed according to the will of the testator; we do hereby authorize him, the said C. D. as such executor, to collect and secure, all and singular, the goods, chattels, rights and credits which were of the said A. B. at the time of his death, in whosoever hands or possession the same may be found; and to perform and fulfil all such duties as may be enjoined upon him by said will, so far as there shall be property, and the law charge him; and in general to do and perform all other acts and things which now are, or hereafter may be required of him by law.

Form of letters testamentary to executors.

In testimony whereof, I, E. G., judge of the probate court for _____ county, have hereunto signed my name, and affixed the seal of said court, at _____, in said county, this _____ day of _____, A. D., 18 .

[Seal of Probate Court.]

E. G., Judge of Probate.

CHAPTER 1. SEC. 25. Letters of administration hereafter to be issued in this territory, may be in the following form:

Territory of Oregon, } ss:
County of

To all persons to whom these presents shall come, greeting:

Form of letters of administration

Know ye, that whereas A. B., late of the county of _____, died intestate as it is said, leaving at the time of his death property in this territory which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected, preserved and disposed of according to law; we do hereby appoint C. D. administrator of all the goods and chattels, rights and credits which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are, or hereafter may be required of him by law.

In testimony whereof, I, E. G., judge of the probate court for _____ county, have hereunto signed my name, and affixed the seal of said court at _____ in said county, this _____ day of _____, A. D., 18—.

[Seal of Probate Court.] E. G., Judge of Probate.

1b. SEC. 26. In all cases where letters of administration with the will annexed, letters of administration to special administrators, or letters of administration *de bonis non*, shall hereafter be issued by the probate court, the same may be issued in conformity to the foregoing forms, with such variations as may suit each particular case.

Proceedings when will is found after administration granted. SEC. 27. If, after letters of administration are granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked; and letters testamentary or of administration, with the will annexed, shall be granted.

1b. If will be set aside. SEC. 28. If, after a will has been found, and letters thereon granted, the will shall afterwards be set aside, the letters shall be revoked, and letters of administration granted on the goods unadministered.

Marriage of executrix. SEC. 29. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate; nor shall the administration thereby devolve on him, but the marriage shall extinguish her powers and the letters be revoked.

Judge to revoke, &c., in certain cases. SEC. 30. If any executor or administrator become of unsound mind, or be convicted of felony or other infamous crime, or become a habitual drunkard, or otherwise incapable of or unsuitable for executing the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or co-administrator, the probate court upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if he find it just, shall revoke the letters granted.

CHAPTER 1. SEC. 31. If any heir, legatee, creditor or other person interested in any estate, file in the probate court an affidavit stating that the affiant has sufficient cause to believe that the sureties in the executor's or administrator's bond has or is likely to become insolvent; or has died or removed from the territory; or that the principal in such bond has or is likely to become insolvent or is wasting the estate; or that the penalty of such bond is insufficient, or that such bond has not been taken according to law; and shall have given the principal in such bond at least ten days' notice of the complaint, the court shall examine into the complaint.

Legatees, &c., may apply in certain cases for relief. 11 Paige 261.

SEC. 32. If any person bound as surety in any executor's or administrator's bond, file in the probate court an affidavit stating that the affiant has sufficient reason to believe and does believe his co-surety has died, or has or is likely to become insolvent, or has removed from the territory; or the principal in such bond has or is likely to become insolvent or is wasting the estate, and shall have given to the principal in such bond at least ten days' notice of such complaint, the court shall examine into the same.

Application by sureties for relief.

SEC. 33. If the probate court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond with sufficient sureties to be given.

New bond.

SEC. 34. Such additional bond when given and approved, shall discharge the former sureties from any liability arising from the misconduct of the principal after the filing of the same; and such former securities shall only be liable for such misconduct as happened prior to the giving such new bond.

Former sureties not liable for subsequent acts of administrator.

SEC. 35. If such person fail to give such additional bond and sureties within ten days after making such order, his letters from thenceforth shall be deemed to be revoked and his authority from that time cease.

Failure to give new bond in ten days.

SEC. 36. If any executor or administrator shall publish for six weeks in some newspaper in this territory, in general circulation in the county wherein his letters were granted, a notice of his intention to apply to the probate court to resign his letters, and the court on proof of such publication, believe that he should be permitted to resign, it shall so order; said publication of notice in the newspaper upon application to the probate court for that purpose may be dispensed with, and instead thereof, the probate court may require said executor or administrator to post ten written or printed handbills containing said notice, in ten of the most public places in the county where his letters were granted, at least twenty days before the term of the court at which he makes application to resign his letters.

Resignations

SEC. 37. Such person shall then surrender his letters; his power from that time shall cease; and he shall pay the expenses of publication, and of all the proceedings on such application.

1b.

SEC. 38. If there be no more than one executor or administrator of an estate, and the letters of part of them be revoked or surrendered or a part die, or in any way become disqualified, those who remain shall perform all the duties required by law respecting the estate.

Co-executor becoming incompetent.

SEC. 39. If all the executors or administrators of an estate shall die, resign, or their letters be revoked, in cases not otherwise pro-

If all become incompetent.

CHAPTER 1. vided for, letters of administration of the goods remaining unadministered, shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration; and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators.

Liability of administrator, &c., after resignation, &c. SEC. 40. If any executor or administrator resign, or his letters be revoked, or he die, he or his legal representatives shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administrator, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind of the deceased, at such time and in such manner as the court shall order, on final settlement with such executor or administrator or his legal representatives.

Administrator may proceed against predecessor. SEC. 41. The succeeding administrator, remaining executor or administrator, may proceed at law against any delinquent, former executor or administrator, or his legal representatives, or the sureties of either, or against any other person possessed of any part of the estate.

Suits to be commenced in six years. SEC. 42. All suits against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal.

Failure to account yearly. SEC. 43. If any executor or administrator fail to make either annual or final settlement as required by law, and do not show good cause for such failure, after having been cited for that purpose by the probate court, it shall order such executor or administrator to give notice when required, and to make such settlement; and may enforce obedience to such order by attachment, and may revoke his letters.

Settlement after revocation, &c., how compelled. SEC. 44. If any person who has surrendered his letters testamentary or of administration, or whose letters have been revoked, or the legal representatives of any deceased executor or administrator, shall fail to make final settlement as required by law, after being cited for that purpose by the probate court, it shall order such delinquents to make such settlement, and may enforce obedience to such order by attachment.

Costs. SEC. 45. In all cases where citations or attachments may be issued against any executor, administrator or other person for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

Inventory of partnership effects. SEC. 46. The executor or administrator on the estate of any deceased member of a co-partnership, shall include in the inventory which he is required by law to return to the probate court, the whole of the partnership property, goods, chattels, rights and credits appraised at their true value as in other cases; but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the co-partnership interest.

Partnership effects, when under control of surviving partner. SEC. 47. The co-partnership property thus appraised, shall remain with or be delivered over as the case may be, to the surviving partner or partners who may be disposed to undertake the management thereof, agreeably to the conditions of a bond which he or they shall be required to give to the Territory of Oregon, in such

sum and with such sureties as are required in other cases of administration. **CHAPTER 1.**

Bond of surviving partner. SEC. 48. The condition of such bond shall in substance be as follows:

The condition of the above bond is, that if A. B., or A. B. and C. D., surviving partner or partners of the late firm of _____, shall use due diligence and fidelity in closing the affairs of the said co-partnership, apply the proceeds thereof towards the payment of the co-partnership debts, render a true account on oath to the probate court, whenever required so to do by said court, of all the co-partnership affairs, and pay over within one year, unless a longer time be allowed by the probate court, to the executor or administrator, the excess, if any there be beyond satisfying the partnership debts; then this bond shall be void, otherwise remain in full force.

Power of court over surviving partner. SEC. 49. The probate court shall have the same authority to cite such survivor or survivors to account and to adjudicate upon such account, as in the case of any ordinary administration; and the parties interested shall have the like remedies by means of such bond for misconduct or neglect of such survivor or survivors, as may be had against administrators.

Refusal, &c., of surviving partner to give bond. SEC. 50. In case the surviving partner or partners having been duly cited for that purpose, shall all neglect or refuse to give the bond required by law, the executor or administrator on the estate of such deceased partner, on giving a bond as provided in the following sections, shall forthwith take the whole partnership estate, goods, chattels, rights and credits into his own possession, and shall be authorized to use the name of the survivor or survivors in collecting the debts due the late firm if necessary, and shall, with the partnership property, pay the debts due from the late firm, and return or pay to the survivors, his or their proportion of the excess, if any.

New bond by executor before administering partnership effects. SEC. 51. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond to its satisfaction, conditioned that he will faithfully execute his trust according to law, which bond may be enforced like other administration bonds.

Partner to exhibit effects to appraisers. SEC. 52. Every surviving partner on the demand of any administrator of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement; and in case the administration thereof, shall devolve upon such administrator, the said survivor or survivors shall surrender to him on demand, all the property of such partnership, including their books, papers and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

Ib. In case of refusal may be committed. SEC. 53. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal to appear before the probate court; and unless he comply with such provision, or show sufficient excuse for his omission, the probate court may commit him to the common jail of the county, there to remain until he comply, or be discharged by due course of law.

CHAPTER 2.
Non-residents not to administer.

SEC. 54. Letters testamentary or of administration shall not be granted to a non-resident of this territory; and when an executor or administrator shall become non-resident, the probate court having jurisdiction of the estate of the testator or intestate of such executor or administrator shall revoke his letters.

CHAPTER II.

OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

- SEC. 1. Executor to make and return inventory on oath two months after appointment.
- 2. Estate, &c., to be appraised; appointment of appraisers, their fees how paid.
- 3. Appraisers before acting to take oath; appraisal how made, inventory what to contain.
- 4. Inventory what to contain.
- 5. The appointment of a debtor executor, not to discharge debt.
- 6. Discharge of any debt in a will, to be considered a specific bequest.
- 7. Inventory to be signed by appraiser and executor and sworn to before judge of probate.
- 8. Liability of executor for not returning inventory after time allowed.
- 9. New assets discovered, to be appraised and inventoried: inventory to be returned.
- 10. Right of possession of executor, &c., to real and personal estate until, &c.
- 11. Personal estate to be first liable for debts, &c., of deceased.
- 12. Persons embezzling before administration granted, liable in double value of the property.
- 13. Proceedings in case of suspected embezzlement, &c.
- 14. Person cited, refusing to appear and answer in case of suspected embezzlement, may be committed.
- 15. Proceedings to compel account by persons intrusted with any part of estate.

Return of inventory.

SEC. 1. Every executor or administrator shall make and return upon oath into the probate court, within two months after his appointment, a true inventory of the real and personal estate of the deceased which is by law to be administered, and which shall have come to his possession or knowledge.

Appraisers.

SEC. 2. The estate and effects comprised in the inventory shall be appraised by three suitable disinterested persons, who shall be appointed by the judge of probate. If any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed either by the probate judge having jurisdiction of the case, or by the probate judge of such county; and such appraisers shall receive as compensation for their services three dollars per day, to be paid out of the estate.

Oath of appraisers.

SEC. 3. Before proceeding to the discharge of their duties, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath to be attached to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability: then they shall proceed to estimate and appraise the property, and set down each article separately with the value thereof in dollars and cents in figures opposite the respective articles. The inventory shall contain all the estate of the deceased, real and personal, which is by law to be administered; a statement of all debts, partnership and other interests, bonds, mortgages, notes and other securities for the payment of money belonging to

Appraisal;

Inventory.

CHAPTER 2.

the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon if any, and their dates, and the sum which in the judgment of the appraisers may be collectable on each debt, interest or security.

SEC. 4. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the possession or knowledge of the executor or administrator, and if none shall come to his possession or knowledge, the fact shall be so stated in the inventory.

Inventory. What to contain.

SEC. 5. The naming any executor in a will shall not operate as a discharge from any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same as for so much money in his hands at the time the debt or demand became due.

Naming executor in will, not to discharge debt.

SEC. 6. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

Discharge of debts by will invalid as to creditors.

SEC. 7. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe on oath before the probate judge, that the inventory contains a true statement of all the estate of the deceased which has come to his possession or knowledge, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased against the executor or administrator; and the oath shall be indorsed upon or annexed to the inventory.

Inventory to be signed and sworn to.

SEC. 8. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed or within such further time, not exceeding three months, as the court shall allow, the court shall revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate through his neglect.

Executor neglecting to return inventory.

SEC. 9. Whenever property not mentioned in an inventory that shall have been made, shall come to the possession or knowledge of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned, subscribed and sworn to as is provided in this chapter, within two months after the discovery thereof; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

New assets.

SEC. 10. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over by order of the probate court to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings, and fixtures thereon, which are under his control.

Executor's, &c., right to possession of estate.

SEC. 11. The personal estate of the deceased which shall come into the hands of the executor or administrator, shall be first

Personal estate first liable.

CHAPTER 2. chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, the expenses of administration, and the allowance to the family of the deceased, the whole, or so much as may be necessary of the real estate may be sold for that purpose by the executor or administrator, in the manner prescribed by this act.

Embezzlement before administration granted.

SEC. 12. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, in double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Proceedings in case of suspected embezzlement, &c.

SEC. 13. If any executor, administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods or chattels of the deceased; or that he has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title, interest or claim of the deceased, to any real or personal estate, or any claim, demand, or last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the probate court for the county where he may be found, or before the court issuing the order or citation; but in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

Penalty for neglecting citation.

SEC. 14. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined and filed in the probate court.

Persons intrusted with estate, how compelled to account.

SEC. 15. The probate judge, upon the complaint on oath of any executor or administrator, may cite any person who shall have been intrusted with any part of the estate of the deceased person, to appear before the probate court, and may require such person to give a full account on oath, of any moneys, goods, chattels, bonds, accounts or other papers belonging to the estate, which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

CHAPTER III.

PROVISION FOR THE SUPPORT OF THE FAMILY.

- SEC. 1. Widow or minor child may remain in homestead until, &c.—right to appeal, &c.
- 2. On return of inventory, court to set apart for widow and child certain property.
- 3. Further allowance in case such property be insufficient.
- 4. Executor to pay such allowance, in preference to all debts, except, &c.
- 5. Property exempt from execution, how distributed.
- 6. All of the estate of the deceased, when to be assigned to widow and children.
- 7. If there is no widow or child, all of the estate to be deemed assets.

SEC. 1. When a person shall die, leaving a widow, minor child or children, the widow, child or children, shall, until letters have been granted and the inventory returned, be entitled to remain in possession of the homestead and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

Widow or child may remain in homestead; right to apparel, &c.

SEC. 2. Upon the return of the inventory, the court shall set apart for the use of the widow, minor child or children, all the property of the estate, by law exempt from execution.

Property exempt from execution set apart for their use.

SEC. 3. If the amount thus exempt be insufficient for the support of the widow and minor child or children, the probate court shall make such further reasonable allowance out of the estate, as may be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate; but no such allowance shall be made after one year from the granting letters testamentary or of administration.

Allowance in case such property insufficient.

SEC. 4. Any allowance made by the court in accordance with the provisions of the preceding section, shall be paid by the executor or administrator, in preference to all other charges, except funeral charges, and expenses of administration.

Allowance how paid.

SEC. 5. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow and no minor children, such property shall be the property of the widow; and if he shall have left also a minor child or children, one-half to the widow and the remainder to such child, or in equal shares to such children, if there are more than one; if there be no widow, then the whole shall belong to the minor child or children.

Property exempt how distributed.

SEC. 6. If on the return of the inventory of any intestate's estate, who died, leaving a widow or minor children, it shall appear that the value of the estate does not exceed three hundred dollars, the probate court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole estate after the payment of the funeral expenses, and expenses of administration, and there shall be no further proceeding in the administration, unless further estate be discovered.

When all the estate assigned to widow and children.

SEC. 7. If intestate leave no widow or minor children, all his estate shall be assets in the hands of the administrator, after payment of funeral expenses, and expenses of administration, for the payment of the debts of the deceased, or to be distributed according to law.

If no widow or child, estate to be assets.

CHAPTER IV.

OF CLAIMS AGAINST ESTATE.

- SEC. 1. When executor to publish notice to creditors to exhibit accounts.
- 2. Copy of notice, with affidavit of publisher, to be filed.
- 3. Claims barred, unless presented within one year after publication of notice, unless, &c.
- 4. Claim presented, to be supported by affidavit; vouchers may be required.
- 5. Allowance of claim to be indorsed thereon by executor and probate judge.
- 6. Claims allowed to be filed; how ranked.
- 7. Holder when to bring suit on rejected claim.
- 8. Claim barred by statute of limitation, not to be allowed.
- 9. Claim must be presented before action brought.
- 10. Time of vacancy in administration, not included in limitation.
- 11. Claims in action against deceased, to be presented.
- 12. Partial allowance to be indorsed thereon; costs of creditor in case of refusal.
- 13. Effect of judgment on claim against executor.
- 14. Judgment against deceased, may be presented without verification: proviso.
- 15. If claim be doubted, may be submitted to reference.
- 16. Proceedings on reference, report, judgment and effect thereof.
- 17. Claim of executor, how to be presented for allowance to probate judge.
- 18. Penalty for executors neglecting to give notice for two months after appointment.
- 19. Return of statement of claims by executor; nature of statement.

Notice to creditors. SEC. 1. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper, printed in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased, to exhibit them with the necessary vouchers, within one year after the date of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge of probate shall deem necessary, but not less than once a week for four successive weeks.

Copy of notice, &c., to be filed. SEC. 2. After the notice shall have been published, a copy thereof, together with an affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator in the probate court.

Claims to be presented within one year; proviso. SEC. 3. If a claim be not presented within one year after the first publication of the notice, it shall be barred, provided, if it be not then due, or if it be contingent, it may be presented within one year from the time it shall become due or absolute.

Claim to be supported by affidavit. SEC. 4. Every claim presented to the administrator shall be supported by the affidavit of the claimant, that the amount is justly due; that no payments have been made thereon; and that there are no offsets to the same to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

Allowance to be indorsed thereon. SEC. 5. When a claim, accompanied by the affidavit required in the preceding section has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the probate judge, who shall in the same manner indorse on it his allowance or rejection.

SEC. 6. Every claim which has been allowed by the executor or administrator, and the judge of probate, shall be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration.

SEC. 7. When a claim is rejected by either the executor, administrator or the probate judge, the holder shall bring suit in the proper court, against the executor or administrator within three months after the date of its rejection, if it be then due, or within three months after it becomes due, otherwise, the claim shall be forever barred.

SEC. 8. No claim shall be allowed by the executor, administrator or probate judge which is barred by the statute of limitations.

SEC. 9. No holder of any claim against an estate shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

SEC. 10. The time during which there shall be a vacancy in the administration, shall not be included in any limitations herein prescribed.

SEC. 11. If an action be pending against the testator or intestate at the time of his death, the plaintiff shall, in like manner, present his claim to the executors or administrator for allowance or rejection, authenticated as in other cases, and no recovery shall be had in the action, unless proof be made of the presentment.

SEC. 12. Whenever any claim shall have been presented to any executor or administrator and the probate judge, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

SEC. 13. The effect of any judgment rendered against any executor or administrator, upon any claim against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge; and the judgment shall be, that the executor or administrator pay in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court; and no execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give the judgment creditor any priority of payment.

SEC. 14. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death; but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant; and if justly due and unsatisfied, shall be paid in due course of administration; provided, however, that if the execution shall have been levied upon any property of the deceased, the same may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

Claims allowed to be filed.

Suits on rejected claim.

Claims barred not to be allowed.

Must be first presented.

Vacancy in administration excluded.

Claims in action against deceased to be presented

Partial allowance of claim.

Effect of judgment against executor.

Judgment against deceased to be presented.

Proviso.